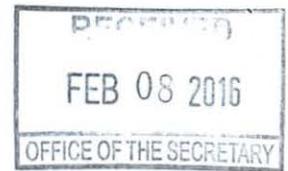


HARD COPY



**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-16926**

**In the Matter of

ROBERT BURTON,

Respondent.**

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division"), pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, and with leave of the Administrative Law Judge ("ALJ"), respectfully moves for an order of summary disposition against respondent Robert Burton ("Respondent" or "Burton"). The motion relies on the accompanying brief in support thereof, and the Declaration of Rebecca Israel.

Dated: February 5, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT

A handwritten signature in blue ink, appearing to read "Rebecca Israel", written over a horizontal line.

Rebecca Israel
Enforcement Counsel
Securities and Exchange Commission
33 Arch Street, 23rd Floor
Boston, MA 02025
(617) 573-4582

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Motion for Summary Disposition, the Division of Enforcement's Brief in Support of Motion for Summary Disposition, the Declaration of Rebecca Israel in Support of Division of Enforcement's Motion for Summary Disposition, and accompanying Exhibits A through F were served on the following on this 5th day of February, 2016, in the manner indicated below:

By Electronic Mail

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

By Certified Mail:

Robert Burton

[REDACTED]
[REDACTED]
[REDACTED]

Ayer, MA [REDACTED]



Rebecca Israel

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16926

<p>In the Matter of</p> <p>ROBERT BURTON,</p> <p>Respondent.</p>

**DIVISION OF ENFORCEMENT'S BRIEF IN SUPPORT OF MOTION FOR
SUMMARY DISPOSITION**

The Division of Enforcement ("Division"), pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, and with leave of the Administrative Law Judge ("ALJ"), respectfully moves for an order of summary disposition against respondent Robert Burton ("Respondent" or "Burton"). On October 27, 2015, the Commission issued an Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing (the "OIP"). The OIP set out allegations that Respondent had been convicted of both criminal securities fraud, and various related charges, and that a state civil injunction had entered against him for various violations of the Massachusetts Consumer Protection Act, including making misrepresentations regarding investment related services. The Commission found that it was necessary to determine a) whether those allegations were true, and b) what, if any, remedial action was appropriate in the public interest pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act").

Accompanying this brief is the Declaration of Rebecca Israel which, with attached exhibits, and the admissions by Respondent in his Answer, provides all facts necessary for a determination by summary disposition that the allegations set out in the OIP are true.

Specifically, two final judgments have previously been entered against the Respondent, including a civil permanent injunction, and a criminal conviction. As a result, the Division respectfully submits that there is no genuine issue with regard to any material fact. As relief, the Division seeks an order barring Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

I. Introduction

On October 27, 2015, the Commission issued the OIP in this case. Respondent Burton filed his Answer pursuant to Rule 220(a) on November 10, 2015. Burton subsequently filed several motions, including a motion to dismiss this proceeding, which the court denied at a prehearing conference held on January 12, 2016. At the same prehearing conference, the Division was granted leave to file a motion for summary disposition.

II. Statement of Facts

Background

1. From at least 2007, through June 2013, Burton owned and operated a business under various names, including, but not limited to, Pinnacle Financial Consulting, LLC, Pinnacle Strategic Investments, LLC, Pinnacle Asset and Capital Management, LLC, Pinnacle Financial and Legal Services, LLC, Pinnacle Management Group, LLC, and Pinnacle Holdings, LLC (collectively, "Pinnacle"). Burton, through Pinnacle, provided various financial services to clients, including tax preparation, investment advising, loan modification, debt consolidation, and bankruptcy petition preparation. [OIP ¶ II.A.1 (admitted in its entirety in Respondent's Answer, with the exception of the phrase "acting as an unregistered investment adviser"); Israel Decl. Ex. A (Second Superseding Indictment), ¶¶ 2 & 3.]

2. Burton, through Pinnacle, collected fees for these financial services and collected funds from clients for the purpose of investment. [Israel Decl. Ex. A, ¶ 4.]

Criminal Action and Burton's Guilty Plea

3. On August 14, 2014, the United States Attorney for the District of Massachusetts filed a Second Superseding Indictment ("SSI") against Burton in the criminal case *United States v. Burton*, No. 13-10292 (D. Mass). [Israel Decl. Ex. A.]

4. On August 21, 2014, Burton pleaded guilty to all counts in the SSI, including five counts of securities fraud. [OIP ¶ II.B.2 (admitted in Respondent's Answer); Israel Decl. Ex. B (Plea Agreement).]

5. On December 23, 2014, Burton was sentenced to 48 months of imprisonment, three years of supervised release, and was ordered to make restitution in the amount of \$159,500. [OIP ¶ II.B.2 (admitted in Respondent's Answer).]

Civil Injunction Against Burton

6. On March 17, 2015, the Suffolk County Superior Court of Massachusetts, in *Commonwealth v. Pinnacle Financial Consulting, LLC*, Civil Action No. 13-0812B, entered a final judgment and permanent injunction against Burton for violations of the Massachusetts Consumer Protection Act, and permanently enjoined Burton from engaging in, among other things, investment advising services. The court also assessed damages of \$1,906,840.45 (consisting of restitution in the amount of \$1,241,840.45 and civil penalties of \$665,000). [OIP ¶ II.C.4 (deemed admitted by Respondent's Answer pursuant to Rule 220(c) of the Commission's Rules of Practice); Israel Decl. Ex. E (Final Judgment & Permanent Injunction).]

Burton's Fraudulent Conduct

7. As set forth in the allegations of the SSI to which Burton pleaded guilty:

a. Burton “carried out his fraud by soliciting investors for specific investments” and “by acting as an investment advisor for the purpose of managing clients’ money and making various investments on their behalf.” [Israel Decl. Ex. A, ¶ 7.]

b. Burton obtained not less than \$150,000 from various investors by falsely representing that he would invest such monies on behalf of those investors. Burton sometimes promised to pay investors guaranteed returns within a short amount of time, usually within 30 days. In actuality, Burton did not invest the monies nor did he make the payments as promised. [Israel Decl. Ex. A, ¶ 6.]

c. Burton misappropriated funds from investors for by routinely depositing investor funds into his Pinnacle business bank accounts, and then withdrawing those funds to pay for his expenses – both business and personal. [Israel Decl. Ex. A, ¶ 7.]

d. As an example, Burton told a client that he would open an Investment Retirement Account for him, and that he would invest his savings “in a diversified portfolio of publicly traded securities and index funds.” [Israel Decl. Ex. A, ¶¶ 8 & 9.] Burton then deposited the funds from this investor into the Pinnacle Management Group, LLC bank account at Bank of America, but never invested the funds. Instead, he used them to pay business and personal expenses. [Israel Decl. Ex. A, ¶¶ 5 & 10.]

e. To conceal his fraud, Burton provided investors with various forms of false documentation including false account statements, false investment updates, and checks that ultimately bounced. [Israel Decl. Ex. A, ¶ 7.] Sometimes he provided investors with “false print-outs purporting to detail [the investor’s] holdings in various publicly traded stocks;” at others, he provided investors “with log-in credentials for a website where [the investor] could view his purported account balance and purported holdings in the ‘Pinnacle Strategic

Investments Ram 21000 Fund,’ the ‘U.S. Currency Fund,’ and the ‘Pinnacle Debt Portfolio 2020.’” [Israel Decl. Ex.. A, ¶¶ 11 & 17.]

f. In another example, Burton solicited one investor for various investments that he alleged were “short term notes” and then provided the investor with a “Confidential Private Placement Memorandum” and promised to return double the principal investment within a month. [Israel Decl. Ex. A, ¶ 18 & 19.]

g. Burton also willfully advised the preparation and presentation of federal Individual Income Tax Returns (Forms 1040), which he knew to be materially false, and Burton signed tax returns under penalties of perjury that he did not believe to be true and correct as to certain material matters. [Israel Decl. Ex. A, ¶¶ 26-29.]

8. In connection with the Final Judgment and Permanent Injunction entered by the Suffolk County Superior Court of the Commonwealth of Massachusetts, the court found that:

a. Burton violated the Massachusetts Consumer Protection Act by, among other violations, “converting client funds, including the investment funds of at least three investment advisory clients.” [Israel Decl. Ex. E, ¶ 3.e.]

b. In addition to the court’s findings regarding Burton’s investment advising services, the court found that Burton engaged in unfair and deceptive conduct with respect to foreclosure-related services, mortgage modification, bankruptcy petition preparation, and that Burton engaged in the unauthorized practice of law. [Israel Decl. Ex. E, ¶ 3.]

III. Argument

a. Standards Applicable to the Division’s Summary Disposition Motion

Rule 250(a) of the Commission’s Rules of Practice permits a party to move “for summary disposition of any or all allegations of the order instituting proceedings” before hearing with

leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). While “[t]he facts of the pleadings of the party against whom the motion is made shall be taken as true,” any “stipulations or admissions made by that party,” along with “uncontested affidavits . . . or facts officially noted pursuant to Rule 323,” modify such facts for purposes of summary disposition. 17 C.F.R. § 201.250(a).

b. Burton’s Criminal Conviction and the Civil Permanent Injunction are the Bases for Imposition of an Industry Bar

Section 203(f) of the Advisers Act authorizes the Commission to impose an industry bar against Burton if: (1) at the time of the alleged misconduct, he was associated with an investment adviser; (2) he was convicted of any offense specified in Section 203(e)(2) or 203(e)(3) within ten years of the commencement of Administrative Proceedings, OR if he was enjoined from any action, conduct, or practice specified in Section 203(4); and (3) the sanction is in the public interest. Burton’s conduct, his criminal conviction, and the civil permanent injunction against him satisfy the requirements of Advisers Act 203(f), and the Commission is therefore authorized to impose an industry bar against him.

c. Burton Acted As, and was Associated with, an Investment Adviser

Advisers Act 202(a)(11) defines an investment adviser as “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.” When Burton solicited investors by (falsely) representing that he would invest such monies on their behalf, he acted as an investment adviser and was associated with an investment adviser. The Suffolk County Superior Court found that Burton’s company, Pinnacle,

“purported to offer investment advising services.” [Israel Decl. Ex. D, ¶ 34.] As Burton was the sole owner and manager of Pinnacle, he qualifies as an “associated person.” See Section 202(a)(17) of the Advisers Act; See also *In the Matter of Benincasa*, Investment Advisers Act Rel. No. 24854, 74 SEC Docket 924, 925-26 (February 7, 2001) (“We have held that, where an individual exercises all of the authority for, and holds all beneficial interest in, an investment adviser, that person is associated with an investment adviser.”). Further, Burton expressly admitted that he acted as an investment adviser; the SSI to which Burton pleaded guilty, alleges that he “carried out his fraud by soliciting investors for specific investments, and, in some instances, by acting as an investment advisor for the purpose of managing clients’ money and making various investments on their behalf.” [Israel Decl. Ex. A ¶ 7.] Burton also admitted that he “obtained not less than \$150,000 from various investors by falsely representing that he would invest such monies on behalf of those investors.” [Israel Decl. Ex. A, ¶ 6.]

Burton compensated himself by using his investment advisory clients’ funds for personal and business expenses. [Israel Decl. Ex. A, ¶¶ 5 – 10; Ex. D, ¶¶ 35 – 37.] Prior Commission decisions have held that diverting client funds for personal use constitutes “compensation” under the Advisers Act. See *In the Matter of Alexander V. Stein*, Investment Advisers Act Rel. No. 1497, 59 SEC Docket 1493, 1498 & n.13 (June 8, 1995) (noting that while it was “unclear whether Stein charged his clients a fee or commission for his services...it [was] clear that he, in effect, paid himself from his clients’ funds when he diverted a portion of these funds to his personal use” and “[t]hat Stein may have declined to “charge” his clients for his services, knowing he would compensate himself with client funds, cannot place him outside the definition of ‘investment adviser’”); see also *In the Matter of John Francis D’Acquisto*, Initial Decision

No. 103, 63 SEC Docket 1360, 1368 (Dec. 13, 1996) (“diversion of client monies” qualifies as “compensation”), *decision made final*, 63 SEC Docket 1930 (Jan. 17, 1997).

While Burton, in his answer to the OIP, denied that he was associated with an Investment Adviser, this is not a genuine dispute of fact, as he has admitted all the facts necessary for this conclusion by virtue of his criminal plea agreement, and the same predicate facts have been determined conclusively for these purposes by the findings in the civil case. These findings and the plea agreement cannot be collaterally attacked here. *See In re Burton*, File No. 3-16926, Prehearing Order, Release No. 3500, January 13, 2016 at 1 (“It is well established that the commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings.”) *See also id.* at 1, FN 2 (“[n]or does the commission permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent”). Burton’s misconduct occurred while he was, for compensation, engaged in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, and while he was the owner of his unregistered investment advising business, Pinnacle. He was therefore associated with an investment adviser.

d. Burton was Convicted of Offenses Enumerated in Section 203(e)

It is undisputed that, within ten years of the institution of this proceeding, Burton was convicted of an offense enumerated in Advisers Act Section 203(e), which, per Section 203(e)(2)(A), embraces any felony or misdemeanor that involves the purchase or sale of any security. Burton pleaded guilty to five counts of securities fraud, and specifically to employing “manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security.” [Israel Decl. EX. A, ¶ 31.]

e. The Permanent Injunction Against Burton Provides a Second, Independent, Basis for the Proposed Sanction

Pursuant to Section 203(e)(4), a court-ordered injunction prohibiting a person from acting as an investment adviser can also be the basis for the Commission issuing the industry bar sought as relief in this matter. The permanent injunction issued against Burton, enjoining him from engaging in investment advising services, satisfies this criterion, and therefore provides an independent basis for this action.

f. An Industry Bar Against Burton is in the Public Interest

Any sanction imposed pursuant to Advisers Act § 203(f) must be in the public interest. The public interest factors set out in *Steadman v. SEC* are: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood of future violations. 603 F.2d 1126, 1150 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59404 (Feb. 13, 2009); 2009 WL 367635, *pet. denied*; 592 F.3d 173 (D.C. Cir. 2010); *Aaron Jousan Johnson*, Release No. 608, 2014 WL 2448901 (June 2, 2014). No one of the *Steadman* factors is dispositive. *Kornman v. SEC*, 592 F.3d 173, 181.

Burton's offenses in the underlying actions were egregious in nature, and involved not only securities fraud, but also tax fraud, a mortgage modification scam, and the unauthorized practice of law.¹ [Israel Decl. Ex. A and Ex. D.] Burton not only solicited investments from unsuspecting victims, but he then concealed his fraudulent misappropriation from those investors by providing the false account statements and even online log-ins that purportedly showed the

¹ With respect to some of these other offenses, it was noted that Burton and his companies "targeted minority and non-native English speaking consumers." [Israel Decl. Ex. D, ¶ 20.]

victims' holdings. Burton's conduct was recurrent, over the period of at least five years, and resulted in both civil and criminal actions against him.

Despite his guilty plea, as well as a civil state court judgment against him, Burton has not recognized the wrongfulness of his conduct nor provided assurances against future violations. To the contrary, despite pleading guilty, Burton is now attacking his criminal conviction via several motions in federal court, arguing that paltry sums he allegedly returned to his victims should exculpate him from his clear fraud and misappropriation of their investment funds. Further, Burton continued to flout the law even after arrest by violating the conditions of his release pending sentencing, which release the District Court then revoked, noting Burton's "lack of credibility and candor with Pretrial Services." [Israel Decl. Ex. F, at 2.] Burton's disavowal of his guilty plea, along with his recent attempts to deflect blame and to minimize his conduct, indicate a high likelihood of future violations if he is not permanently barred.

g. Summary Disposition is Appropriate Here

Because there is no genuine issue of material fact in dispute in this matter, the Division respectfully requests that the Court find that the allegations of the OIP are true, and have been proven, and order the relief requested.

Dated: February 5, 2016

Respectfully submitted,

DIVISION OF ENFORCEMENT



Rebecca Israel
Enforcement Counsel
Securities and Exchange Commission
33 Arch Street, 23rd Floor
Boston, MA 02025
(617) 573-4582

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16926

<p>In the Matter of</p> <p>ROBERT BURTON,</p> <p>Respondent.</p>

**DECLARATION OF REBECCA ISRAEL IN SUPPORT OF DIVISION OF
ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

I, Rebecca Israel, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an Enforcement Attorney in the Division of Enforcement ("Division") of the Securities and Exchange Commission's Boston Regional Office and have been a member of the Division staff since 2014. I am one of the Division attorneys in the above-captioned proceeding against Robert Burton ("Burton"). I make this declaration based upon my personal knowledge and in support of the Division's Motion for Summary Disposition.

2. On August 14, 2014, Burton was charged, by the Grand Jury for the United States District Court for the District of Massachusetts in a Second Superseding Indictment, with six counts of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff and in violation of 17 CFR § 240.10b-5; two counts of procuring false tax returns in violation of 26 U.S.C. § 7206(2); and four counts of subscribing false tax returns in violation of 26 U.S.C. § 7206(1) in *United States v. Burton*, Case No. 13-10292 (D.

Mass). Attached hereto as Exhibit A is a true and accurate copy of the Second Superseding Indictment in that matter.

3. On August 21, 2014, before the United States District Court for the District of Massachusetts, Burton pled guilty to all counts in the Second Superseding Indictment. Attached hereto as Exhibit B is a true and accurate copy of the Plea Agreement, signed by Burton on August 19, 2014.

4. Attached hereto as Exhibit C is a true and accurate copy of the December 23, 2014 “Judgment in a Criminal Case” issued by the Honorable Mark Wolf against Burton in *United States v. Burton*.

5. On March 17, 2015, the Suffolk County Superior Court for the Commonwealth of Massachusetts issued Findings of Fact and Conclusions of Law Against Defendants Pinnacle Financial Consulting, LLC and Robert Burton in the case *Commonwealth v. Pinnacle Financial Consulting, LLC*, Civil Action No. 13-0812B. Attached hereto as Exhibit D is a true and accurate copy of those Findings of Facts and Conclusions of Law.

6. Attached hereto as Exhibit E is a true and accurate copy of the “Final Judgment and Permanent Injunction” issued on March 25, 2015, by the Suffolk County Superior Court for the Commonwealth of Massachusetts in the case *Commonwealth v. Pinnacle Financial Consulting, LLC*, Civil Action No. 13-0812B.

7. On October 3, 2014, after a hearing on the issue of revocation of pretrial release, the United States District Court for the District of Massachusetts revoked Respondent Robert Burton’s pretrial release. Attached hereto as Exhibit F is a true and

accurate copy of the "Order Revoking Pretrial Release," Docket #101, in the case *United States v. Burton*, Case No. 13-10292 (D. Mass).

Executed under the pains and penalties of perjury this 5th day of February 2016 at Boston, Massachusetts.


Rebecca Israel

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.)
)
)
ROBERT BURTON)
Defendant)
_____)

Crim No. 13-CF-10292 *MLW*
15 U.S.C. §§78j(b) & 78ff &
17 C.F.R. §240.10-b5 (Fraud in
Connection with the Purchase or
Sale of Securities)
18 U.S.C. §2 (Aiding and Abetting)
26 U.S.C. §7206(1) (Subscribing False
Tax Returns)
26 U.S.C. §7206(2) (Procuring False Tax
Returns)
18 U.S.C. § 981(a)(1)(C) & 28 U.S.C.
§ 2461 (Criminal Forfeiture)

SECOND SUPERSEDING INDICTMENT

The Grand Jury Charges that:

GENERAL ALLEGATIONS

At all times relevant to this Superseding Indictment:

1. ROBERT BURTON ("BURTON") was an individual who resided in Massachusetts.
2. BURTON owned and operated a business that provided various financial services, which business operated under various names, including but not limited to, Pinnacle Financial Consulting, LLC, Pinnacle Strategic Investments, LLC, Pinnacle Asset and Capital Management, LLC, Pinnacle Financial and Legal Solutions, LLC, Pinnacle Management Group, LLC and Pinnacle Holdings, LLC (collectively, "Pinnacle"). Pinnacle maintained offices at various locations in Massachusetts.

3. BURTON and Pinnacle provided various financial services to clients, including tax preparation, investment advising, loan modification, debt consolidation and bankruptcy petition preparation.

4. BURTON, through Pinnacle, collected fees for these financial services. BURTON also collected funds from clients for the purpose of investment and for the purpose of making loan payments on behalf of clients.

5. BURTON maintained various bank accounts in the names of various Pinnacle entities, including but not limited to, Bank of America ("Bank of America") Account *****1044 (the "Pinnacle Management Group, LLC account"); Citibank N.A. ("Citibank") Account *****7036 (the "Pinnacle Strategic Investments, LLC account"); Citibank Account *****6978 (the "Pinnacle Financial Consulting, LLC account"); and Citizens Bank ("Citizens") Account *****0351 (the "Pinnacle Holdings LLC Account"). Bank of America, Citibank and Citizens were federally insured banks operating in interstate commerce.

The Fraudulent Scheme Operated by Burton

6. Beginning not later than in or about 2007, and continuing through in or about June 2013, BURTON obtained not less than \$150,000 from various investors by falsely representing that he would invest such monies on behalf of those investors. In some instances, Burton promised to pay investors guaranteed returns within a short amount of time, usually within 30 days. In actuality, BURTON did not invest the monies as promised and did not make the promised payments.

Manner and Means of the Fraud

7. BURTON carried out his fraud by soliciting investors for specific investments and, in some instances, by acting as an investment advisor for the purpose of managing clients' money and making various investments on their behalf. Upon receiving funds from investors, BURTON routinely deposited the money into his business bank accounts and subsequently made cash withdrawals and also used the money to pay, among other things, business and personal expenses. In some instances, he did not make payments as promised. BURTON concealed the misappropriation of investor funds by, among other things, providing investors with false account information, investment updates and checks that ultimately bounced.

A.C.

8. A.C., an active duty Army chaplain, was introduced to BURTON in or about 2007. During A.C.'s first meeting with BURTON, BURTON advised A.C. that BURTON was working as a financial consultant for Deutsche Bank and that he was providing financial advising services for a number of individuals as a side business. BURTON offered to open an Individual Retirement Account for A.C. and to invest A.C.'s savings in index funds and a diversified equities portfolio.

9. Shortly after their first meeting, A.C. gave BURTON \$25,000 to invest on his behalf. BURTON represented to A.C. that he would invest A.C.'s money in a diversified portfolio of publicly traded securities and index funds.

10. BURTON deposited A.C.'s \$25,000 into his Pinnacle Management Group, LLC account. BURTON did not, however, invest the funds as promised. A.C.'s funds were instead used to pay, among other things, business and personal expenses.

11. Following A.C.'s investment, BURTON concealed the misappropriation by, among other things, providing A.C. with oral updates regarding A.C.'s holdings. BURTON also provided A.C. with false print-outs purporting to detail A.C.'s holdings in various publicly traded stocks and sent A.C. text messages regarding A.C.'s alleged investments. In 2011, BURTON provided A.C. with log-in credentials for a web site, where A.C. viewed his purported account balance.

L.C.

12. In or about 2010, L.C. and L.C.'s wife, M.C., retained Pinnacle and BURTON to assist with the modification of their mortgage. In or about August 2010, during their dealings with BURTON regarding the loan modification, BURTON began soliciting them for the purpose of providing investment advisory services as well.

13. In or about 2011, and pursuant to BURTON's advice and direction, L.C. liquidated approximately \$98,000 from his retirement account at Fidelity Investments. L.C. used a portion of those proceeds to pay his mortgage. In or about August 2011, L.C. gave BURTON \$40,000 to invest on L.C.'s behalf.

14. BURTON deposited L.C.'s \$40,000 into his Pinnacle Strategic Investments, LLC account. BURTON did not, however, invest the funds as promised. L.C.'s funds were instead used to pay, among other things, business and personal expenses.

15. In or about May 2012, L.C. provided BURTON with an additional \$35,000 to invest on L.C.'s behalf.

16. BURTON deposited L.C.'s \$35,000 into his Pinnacle Financial Consulting, LLC account. BURTON did not, however, invest the funds as promised. L.C.'s funds were instead used to pay, among other things, business and personal expenses.

17. Following L.C.'s investments, BURTON concealed the misappropriation by, among other things, providing L.C. with log-in credentials for a web site, where L.C. could view his purported account balance and purported holdings in the "Pinnacle Strategic Investments Ram 2100 Fund," the "U.S. Currency Fund" and the "Pinnacle Debt Portfolio 2020."

S.H.

18. Beginning in July 2012, BURTON solicited S.H. for various investments, including investments in "short term" notes. Among other things, BURTON sent S.H. a series of text messages and responded to a set of written questions describing the investments.

19. Thereafter, on or about July 31, 2012, S.H. provided BURTON with \$40,000 for investment and BURTON provided S.H. with a "Confidential Private Placement Memorandum" and Promissory Note from Pinnacle Strategic Investments, LLC pursuant to which Pinnacle Strategic Investments, LLC agreed to return S.H.'s \$40,000 principal and another \$40,000 in interest by September 1, 2012. According to the Confidential Private Placement Memorandum, the proceeds from the offering were to be used for the purchase of a "debt portfolio."

20. BURTON deposited S.H.'s \$40,000 into the Pinnacle Financial Consulting, LLC account. S.H.'s funds were subsequently used to pay, among other things, business and personal expenses and BURTON did not repay the invested funds, as promised, by September 1, 2012.

21. BURTON concealed the misappropriation by repeatedly assuring S.H. that the money would be forthcoming, and made such re-assurances by e-mail and text message. After S.H. advised that he intended to go to authorities, BURTON returned a fraction of S.H.'s original investment and never made the promised interest payment. BURTON also provided S.H. with checks that bounced when S.H. attempted to deposit them.

E.V.

22. In 2010, E.V. retained BURTON and Pinnacle to prepare his tax returns.

23. Subsequently, in or about April 2013, BURTON solicited E.V. for an investment in a "debt portfolio." BURTON advised E.V. that if E.V. provided BURTON with \$25,000, BURTON would double it in 30 days. BURTON further advised E.V. that E.V. had to give BURTON the \$25,000 for investment in cash.

24. Thereafter, on or about May 1, 2013, E.V. gave BURTON \$25,000 in cash and BURTON provided E.V. with a document entitled "Confidential Private Placement Memorandum" and a Promissory Note from Pinnacle Strategic Investments, LLC, which BURTON signed, and pursuant to which BURTON and Pinnacle Strategic Investments, LLC agreed to return E.V.'s \$25,000 principal and another \$25,000 in interest by June 1, 2013. BURTON, however, did not repay the invested funds, as promised.

25. BURTON concealed the misappropriation by assuring E.V. that the money would be forthcoming, and advised E.V. that, in order to return E.V.'s money, he would liquidate the debt portfolio. BURTON also provided E.V. with four post-dated checks for \$12,500 each, which checks were purportedly drawn on the Pinnacle Holdings, LLC account. When E.V. attempted to cash the first check, it was returned for insufficient funds.

Burton's False Tax Filings

26. BURTON, through Pinnacle, offered tax preparation services to various clients, including but not limited to, R.T. and R.T.'s wife, B.T., as well as L.C. and L.C.'s wife, M.C.

27. BURTON prepared the personal tax return (Form 1040) for R.T. and B.T. for the 2008 tax year. As BURTON knew, R.T. and B.T. owned a business from which R.T. and B.T. received more than \$300,000 in income during the 2008 tax year. The 2008 tax return that BURTON prepared and filed on behalf of R.T. and B.T. did not include any of that income.

28. BURTON prepared the personal tax return (Form 1040) for L.C. and M.C. for the 2011 tax year. As BURTON knew, L.C. and M.C. had liquidated approximately \$98,000 from L.C.'s retirement account at Fidelity Investments, which distribution was taxable as income to L.C. and M.C. during the 2011 tax year. The 2011 tax return that BURTON prepared and filed on behalf of L.C. and M.C. omitted the approximately \$98,000 retirement account distribution.

29. BURTON also prepared and filed personal tax returns (Form 1040) for himself for the 2008, 2009, 2010 and 2011 tax years. The tax returns for each of those years substantially understated Pinnacle's gross receipts and thus understated the business income that Burton derived from Pinnacle. BURTON also falsely claimed two dependents for the 2010 and 2011 tax years.

COUNTS ONE THROUGH FIVE
(Securities Fraud – 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. §240.10b-5)

30. The Grand Jury realleges and incorporates by reference paragraphs 1 – 29 of this Superseding Indictment and further charges that:

31. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

ROBERT BURTON,

willfully, by the use of means and instrumentalities of interstate commerce, including internet web pages, mobile text messaging services, electronic mail, telephone services, and deposits into and withdrawals from federally insured banking institutions, did directly and indirectly use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security in contravention of Rule 10b-5 (17 C.F.R. Section 240.10b-5) of the Rules and Regulations promulgated by the United States Securities and Exchange Commission by: (a) employing devices, schemes and artifices to defraud, (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of circumstances under which they were made, not misleading, and (c) engaging in acts, practices and courses of business which would and did operate as a fraud and deceit, in connection with the following purchases and sales of securities:

Count	Date	Investor	Security
1	January 2007 – November 2011	A.C.	\$25,000 of publicly traded securities
2	August 2011- April 2013	L.C.	\$40,000 of Pinnacle Strategic Investments Ram 2100 Fund, the U.S. Currency Fund and the Pinnacle Debt Portfolio 2020
3	May 2012 – April 2013	L.C.	\$35,000 of Pinnacle Strategic Investments Ram 2100 Fund, the U.S. Currency Fund and the Pinnacle Debt Portfolio 2020
4	July 2012 – September 2012	S.H.	\$40,000 interest in Pinnacle Strategic Investments, LLC
5	May 2013 – June 2013	E.V.	\$25,000 interest in Pinnacle Strategic Investments, LLC

All in violation of 15 U.S.C. §§ 78j(b) and 78ff(a) [Securities and Exchange Act of 1934, Sections 10(b) and 32] and 17 C.F.R. §240.10b-5 [Exchange Act Rule 10b-5], and 18 U.S.C. § 2.

COUNTS SIX THROUGH SEVEN
(26 U.S.C. §7206(2) – Procuring False Tax Returns)

32. The Grand Jury realleges and incorporates by reference paragraphs 1 – 29 of this Superseding Indictment and further charges that:

33. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

ROBERT BURTON,

did willfully aid, assist in, and procure, counsel and advise the preparation and presentation of federal Individual Income Tax Returns (Form 1040), which tax returns, as the defendant knew and believed, were fraudulent and false as to material matters as set forth below:

Count	Tax Payers	Date	Period	False Item(s)
6	R.T. and B.T.	January 23, 2009	2008 Tax Year	Line 17 (Income from S Corporation)
7	L.C. and M.C.	April 30, 2012	2011 Tax Year	Line 15(a) (IRA Distributions)

All in violation of 26 U.S.C. § 7206(2).

**COUNTS EIGHT THROUGH ELEVEN
(26 U.S.C. §7206(1) – Subscribing False Tax Returns)**

34. The Grand Jury realleges and incorporates by reference paragraphs 1 – 29 of this Superseding Indictment and further charges that:

35. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

ROBERT BURTON,

did willfully make and subscribe a return, statement and other document that contained and was verified by a written declaration that it was made under penalties of perjury and that he did not believe to be true and correct as to every material matter as set forth below:

Count	Date	Period	False Item(s)
8	January 16, 2009	Tax year 2008	Schedule C, Line 1 (Gross Receipts or Sales); Line 22 (Total Income)
9	May 11, 2010	Tax year 2009	Schedule C, Line 1 (Gross Receipts or Sales); Line 22 (Total Income)
10	February 5, 2011	Tax year 2010	Line 12 (Business Income or Loss); Line 22 (Total Income); Line 6(c) (Dependents)
11	January 17, 2012	Tax year 2011	Schedule C, Line 1 (Gross Receipts or Sales); Line 22 (Total Income); Line 6(c) (Dependents)

All in violation of 26 U.S.C. § 7206(1).

FORFEITURE ALLEGATIONS
18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)

The Grand Jury further charges that:

36. The Grand Jury realleges and incorporates by reference paragraphs 1 - 31 of this Superseding Indictment and further charges that:

37. Upon conviction of one or more of Counts One through Five in the Superseding Indictment, the defendant,

ROBERT BURTON,

shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to such violations.

38. If any of the property described in paragraph 38, hereof as being forfeitable pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the property described in paragraph 38.

All in accordance with 18 U.S.C. § 981(a)(C) and 28 U.S.C. § 2461(c).

A TRUE BILL,

Kevin A. Gullis
FOREPERSON OF THE
GRAND JURY

Sarah E. Walters
Sarah E. Walters
Assistant U.S. Attorney

[Signature]
Deputy Clerk
w/12:37P14
8/14/14

Exhibit B



U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

August 19, 2014

Oscar Cruz, Esq.
Office of the Federal Defender
51 Sleeper Street
Boston, MA 02210

Re: United States v. Robert Burton
Criminal No. 13-10292-MLW

Dear Mr. Cruz:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Robert Burton ("Defendant"), in the above-referenced case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, but in any event no later than August 21, 2014, Defendant shall plead guilty to all counts in which he is named in the above-referenced Second Superseding Indictment: Counts 1-5, charging him with securities fraud, in violation of 15 U.S.C. §§78j(b) and 78ff and 17 C.F.R. §240.10b-5; Counts 6-7, charging him with procuring false tax returns, in violation of 26 U.S.C. §7206(2); and Counts 8-11, charging him with subscribing false tax returns, in violation of 26 U.S.C. §7206(1). Defendant expressly and unequivocally admits that he committed the crimes charged in Counts 1-11 of the Second Superseding Indictment, did so knowingly, intentionally and willfully, and is in fact guilty of those offenses.

2. Penalties

Defendant faces the following maximum penalties on each count of the Second Superseding Indictment: on Counts 1-5, incarceration for 20 years; supervised release for three years; a fine of \$5 million or twice the gross loss to the victim, or twice the gross gain, whichever is greater; a mandatory special assessment of \$100; restitution; and forfeiture to the extent charged in the Second Superseding Indictment; on Counts 6-11, incarceration for three years, supervised release for one year, a fine of \$100,000 and the costs of prosecution, and a mandatory special assessment of \$100.

Defendant also recognizes that pleading guilty may have consequences with respect to Defendant's immigration status if Defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offenses to which Defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and Defendant understands that no one, including defense counsel and the District Court, can predict to a certainty the effect of this conviction on Defendant's immigration status. Defendant nevertheless affirms his decision to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is Defendant's automatic removal from the United States.

3. Fed. R. Crim. P. 11(c)(1)(C) Plea

This plea agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and Defendant's guilty plea will be tendered pursuant to that provision. In accordance with Rule 11(c)(1)(C), if the District Court ("Court") accepts this Agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any aspect of this Agreement, the U.S. Attorney may deem the Agreement null and void. Defendant understands and acknowledges that he may not withdraw his plea of guilty unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

4. Sentencing Guidelines

The parties agree jointly to take the following positions at sentencing under the United States Sentencing Guidelines ("USSG" or "Guidelines"). The parties agree with respect to the application of the USSG to the following calculation of the total adjusted offense level:

Fraud Guidelines: Counts 1-5 (Group 1)

- in accordance with USSG §2B1.1(a)(1), Defendant's base offense level is seven, because the offenses to which he is pleading guilty have a statutory maximum penalty of 20 years;

- in accordance with USSG §2B1.1(b)(1)F), Defendant's offense level is increased by ten, because Defendant's conduct resulted in a loss of more than \$120,000 but less than \$200,000;
- in accordance with USSG §2B1.1(b)(19), Defendant's offense level is increased by four, because, the offenses involved a violation of securities law and, at the time of the offenses, Defendant was acting as an investment adviser;

Tax Guidelines: Counts 6-11 (Group 2)

- in accordance with USSG §§2T1.1(a), 2T1.4, and 2T4.1(G), Defendant's base offense level is 18, because Defendant's conduct resulted in a tax loss of more than \$200,000 and less than \$400,000.

Grouping

- in accordance with USSG §3D1.2, the fraud and tax counts do not group.
- in accordance with USSG §3D1.4(a), each Group results in one unit, for a total of two units.
- in accordance with USSG §3D1.4 2B1.1, two levels is added to Group 1, which has the highest offense level.

Acceptance of Responsibility

- in accordance with USSG §3E1.1, based on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case, the adjusted offense level is reduced by three.

The U.S. Attorney's agreement that the disposition set forth below is appropriate in this case is based, in part, on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case.

The U.S. Attorney may, at her sole option, be released from her commitments under this Agreement, including, but not limited to, her agreement that Paragraph 5 constitutes the appropriate disposition of this case, if at any time between Defendant's execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit Defendant's conduct in the offense(s) of conviction;

- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about Defendant's financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw Defendant's guilty plea.

Nothing in this Agreement affects the U.S. Attorney's obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

5. Agreed Disposition

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the U.S. Attorney and Defendant agree that the following is a reasonable and appropriate disposition of this case:

- (a) incarceration or other confinement for a period between 12 months and 24 months, the sentence to be imposed upon Defendant within this range being within the discretion of the Court, subject to the provisions of the advisory USSG and the factors set forth in 18 U.S.C. §3553(a);
- (b) a fine of \$7,500;
- (c) 36 months of supervised release;
- (d) a mandatory special assessment of \$1,100;
- (e) restitution of \$159,500, with at least \$50,000 to \$100,000 to be paid at or before sentencing, and 25% of future earnings to be paid thereafter until the restitution obligation is satisfied in full; and
- (f) forfeiture as set forth in Paragraph 10.

The parties agree jointly to recommend that the Court order restitution to the Internal

Revenue Service ("IRS") in an amount not less than \$278,132.

During the term of supervised release or probation, Defendant must, within six months of sentencing or release from custody, whichever is later:

- (i) cooperate with the Examination and Collection Divisions of the IRS;
- (ii) provide the Examination Division with all financial information necessary to determine Defendant's prior tax liabilities;
- (iii) provide the Collection Division with all financial information necessary to determine Defendant's ability to pay;
- (iv) file accurate and complete tax returns for those years for which returns were not filed or for which inaccurate returns were filed; and
- (v) make a good faith effort to pay all delinquent and additional taxes, interest, and penalties.

6. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

7. Protection of Assets for Payment of Restitution, Forfeiture and Fine

Defendant agrees not to transfer, or authorize the transfer of, any asset that has been restrained by Order of the Court in this case or any asset, whether or not restrained, that Defendant has agreed to forfeit pursuant to this Agreement.

Defendant agrees not to transfer, or authorize the transfer of any other asset in which Defendant has an interest without prior express written consent of the U.S. Attorney, except for:

- (a) Assets subject to superior, secured interests of innocent third parties, in which Defendant has an equity interest of less than \$1,000; and
- (b) Ordinary living expenses necessary to house, clothe, transport and feed Defendant and those to whom Defendant owes a legal duty of support, so long as such assets do not exceed \$2,000 per month.

This prohibition shall be effective as of the date of Defendant's execution of this Agreement and continue until the fine, forfeiture and restitution ordered by the Court at sentencing and any tax liability incurred as a result of the conduct charged in the Second Superseding Indictment are satisfied in full.

Defendant further agrees to complete truthfully and accurately the sworn financial statement enclosed with this Agreement and to deliver that statement to the U.S. Attorney within 30 days of signing this Agreement.

8. Waiver of Right to Appeal and to Bring Future Challenge

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge his conviction in the United States Court of Appeals for the First Circuit (“direct appeal”). Defendant also understands that, in some circumstances, Defendant may be able to challenge his conviction in a future proceeding (collateral or otherwise), such as pursuant to a motion under 28 U.S.C. §2255, 28 U.S.C. §2241 or 18 U.S.C. §3582(c). Defendant waives any right to challenge Defendant’s conviction on direct appeal or in any future proceeding (collateral or otherwise).
- (b) Defendant has conferred with his attorney and understands that defendants ordinarily have a right to challenge in a direct appeal their sentences (including any orders relating to supervised release, fines, forfeiture, and restitution) and may sometimes challenge their sentences (including any orders relating to supervised release, fines, forfeiture, and restitution) in a future proceeding (collateral or otherwise) such as pursuant to 28 U.S.C. §2255, 28 U.S.C. §2241 or 18 U.S.C. §3582. The rights that are ordinarily available to a defendant are limited when a defendant enters into a Rule 11(c)(1)(C) agreement. In this case,—Defendant waives any rights Defendant may have to challenge the agreed-upon sentence (including any agreement relating to supervised release, fines, forfeiture, and restitution) on direct appeal and in a future proceeding (collateral or otherwise), such as pursuant to 28 U.S.C. §2255 and 28 U.S.C. §2241. Defendant also waives any right Defendant may have under 18 U.S.C. §3582 to ask the Court to modify the sentence, even if the USSG are later amended in a way that appears favorable to Defendant. Likewise, Defendant agrees not to seek to be resentenced with the benefit of any change to Defendant’s Criminal History Category that existed at the time of Defendant’s original sentencing. Defendant also agrees not to challenge the sentence in an appeal or future proceeding (collateral or otherwise) even if the Court rejects one or more positions advocated by any party at sentencing. In sum, Defendant understands and agrees that in entering into this Agreement, the parties intend that Defendant will receive the benefits of the Agreement and that the sentence will be final.
- (c) The U.S. Attorney agrees that she will not appeal the imposition by the Court of the sentence agreed to by the parties as set out in Paragraph 5, even if the Court rejects one or more positions advocated by either party at sentencing.

- (d) Notwithstanding the previous subparagraphs, Defendant reserves the right to claim that Defendant's lawyer was ineffective in connection with the negotiation of this plea agreement or the entry of the guilty plea.

9. U.S. Probation Office Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the USSG are not binding upon the United States Probation Office.

10. Forfeiture

Defendant understands that the Court will, upon acceptance of Defendant's guilty plea, enter an order of forfeiture as part of Defendant's sentence, and that the order of forfeiture may include assets directly traceable to Defendant's offense, assets used to facilitate Defendant's offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense.

The assets to be forfeited specifically include, without limitation, the following: \$159,500. Defendant admits that these assets are subject to forfeiture on the grounds that they constitute, or are derived from, proceeds of Defendant's offenses charged in Counts One through Five of the Second Superseding Indictment. Defendant agrees to consent to the entry of orders of forfeiture for such property, including the entry of an order of forfeiture in the form of a personal money judgment, and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands and agrees that forfeiture shall not satisfy or affect any fine, lien, penalty, restitution, cost of imprisonment, tax liability or any other debt owed to the United States.

Defendant agrees to assist fully in the forfeiture of the foregoing assets. Defendant agrees to promptly take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. Defendant further agrees (a) not to assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding, and (b) to testify truthfully in any such proceeding. To assist the United States in locating and forfeiting assets, Defendant shall deliver to the U.S. Attorney within 30 days after signing this Agreement a sworn financial statement disclosing all assets in which Defendant currently has any interest, and all assets over which Defendant has exercised control, or has had any legal or beneficial interest, at any time from January 25, 2007 to the present. Defendant further agrees to be deposed with respect to Defendant's assets at the request of the U.S. Attorney

Defendant also agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Agreement. Defendant agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this Agreement, and will not assist any third party with regard to such challenge or review.

Defendant hereby waives and releases any claims Defendant may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets.

11. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning Defendant's assets.

12. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, Defendant may have incurred or may incur as a result of Defendant's conduct and plea of guilty to the charges specified in Paragraph 1 of this Agreement. Defendant agrees to cooperate with employees of the IRS, the Civil Division of the U.S. Attorney's Office, and law enforcement agents working with attorneys in the Civil Division of the U.S. Attorney's Office, in making an assessment of his civil liabilities. Defendant specifically authorizes release by the FBI, the IRS or any investigative agency to the aforementioned agencies and their representatives of information for purposes of making that assessment. Defendant further agrees to assent to the filing and allowance of a motion under Rule 6(e) of the Federal Rules of Criminal Procedure, to permit the disclosure of matters occurring before the grand jury for this purpose.

13. Withdrawal of Plea By Defendant or Rejection of Plea by Court

Should Defendant move to withdraw his guilty plea at any time, or should the Court reject the parties' agreed-upon disposition of the case or any other aspect of this Agreement, this Agreement shall be null and void at the option of the U.S. Attorney. In this event, Defendant agrees to waive any defenses based upon the statute of limitations, the constitutional protection against pre-indictment delay, and the Speedy Trial Act with respect to any and all charges that could have been timely brought or pursued as of the date of this Agreement.

14. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has engaged in any of the activities set forth in Paragraph 4(a)-(j), has violated any condition of Defendant's pretrial release, or has committed any crime following Defendant's

execution of this Agreement, the U.S. Attorney may, at her sole option, be released from her commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to her under the law, regardless whether she elects to be released from her commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which otherwise may have been brought against Defendant and/or have been, or are to be, dismissed pursuant to this Agreement. Defendant understands that his breach of an obligation under this Agreement shall not give rise to grounds for withdrawal of Defendant's guilty plea, but will give the U.S. Attorney the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements that Defendant may make, and any information, materials, documents or objects that Defendant may provide to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges that Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

15. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

16. Complete Agreement

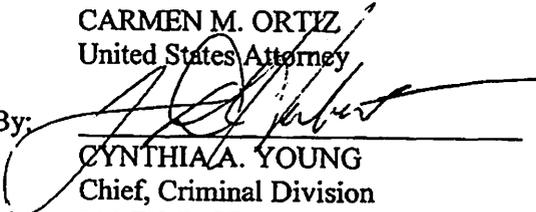
This letter contains the complete and only agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Sarah E. Walters.

Very truly yours,

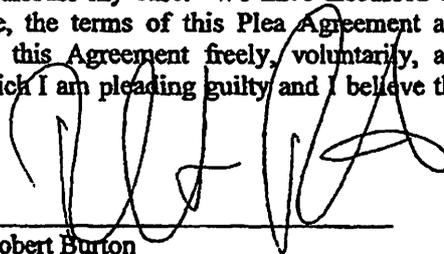
CARMEN M. ORTIZ
United States Attorney

By:


CYNTHIA A. YOUNG
Chief, Criminal Division
JAMES D. HERBERT
Deputy Chief, Criminal Division

ACKNOWLEDGMENT OF PLEA AGREEMENT

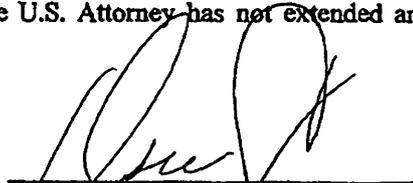
I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter, and that I have received no prior offers to resolve this case. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.



Robert Burton
Defendant

Date: 8/19/2014

I certify that Robert Burton has read this Agreement and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly. I also certify that the U.S. Attorney has not extended any other offers to resolve this matter.



Oscar Cruz
Attorney for Defendant

Date: 8/19/14

Exhibit C

UNITED STATES DISTRICT COURT
District of Massachusetts

UNITED STATES OF AMERICA
V.
ROBERT BURTON

JUDGMENT IN A CRIMINAL CASE

Case Number: 1: 13 CR 10292 - 001 - MLW

USM Number: 95502-038

OSCAR CRUZ, ESQUIRE

Defendant's Attorney

Additional documents attached

Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)

THE DEFENDANT:

pleaded guilty to count(s) 1ss-5ss,6ss-7ss,8ss-11ss (date of Plea: 8/21/14)

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Additional Counts - See continuation page

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
15 USC Sec. 78j(b) and 78ff	Securities Fraud	06/30/13	1ss-5ss
26 USC Sec. 7206(2)	Procuring False Tax Returns	04/30/12	6ss-7ss
26 USC Sec. 7206(1)	Subscribing False Tax Returns	01/17/12	8ss-11ss

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/22/14

Date of Imposition of Judgment

Mark L. Wolf

Signature of Judge

The Honorable Mark L. Wolf
Judge, U.S. District Court

Name and Title of Judge

December 23, 2014

Date

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **48 month(s)**

on each of counts 1ss-5ss, all such terms to run concurrently. 36 months on each of counts 6ss-11ss, all such terms to run concurrently with each other and with counts 1ss-5ss.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **ROBERT BURTON**

CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**

SUPERVISED RELEASE

See continuation page

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **3** year(s)
3 years on counts 1ss-5ss, and terms of 1 year on counts 6ss-11ss, all such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year, as directed by the probation officer.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**

ADDITIONAL SUPERVISED RELEASE PROBATION TERMS

The defendant is prohibited from engaging in an occupation, business, or profession that would require or enable him to provide tax preparation, investment advisory, loan modification, debt consolidation, or bankruptcy petition preparation services.

The defendant is to pay 25% of future earning towards the balance of the restitution imposed.

The defendant is to pay the balance of any fine imposed according to a court-ordered repayment schedule.

The defendant shall pay restitution in the amount of \$271,640 to the IRS according to a court-ordered repayment schedule.

The defendant is prohibited from incurring new credit charges or opening additional lines of credit without the approval of the Probation Office while any financial obligations remain outstanding.

Continuation of Conditions of Supervised Release Probation

The defendant is to provide the Probation Office access to any requested financial information, which may be shared with the Financial Litigation Unit of the US Attorney's Office.

The defendant is to meet with the Internal Revenue Service within the first 90 days of the period of supervision in order to determine the prior tax liability and is to file tax returns and pay any past or future taxes due.

DEFENDANT: **ROBERT BURTON**
 CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
TOTALS	\$ <u>\$1,100.00</u>		\$ <u>\$7,500.00</u>		\$ <u>\$159,500.00</u>

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
██████████		\$25,000.00	
████████████████████		\$75,000.00	
██████████		\$34,500.00	
████████████████		\$25,000.00	

See Continuation Page

TOTALS	\$ _____	\$0.00	\$ _____	\$159,500.00
--------	----------	--------	----------	--------------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The defendant is to make a lump sum payment of \$50,000.00 by January 19, 2015. Payment of the remaining restitution balance is to begin immediately according to the requirements of the Federal Bureau of Prisons' Inmate Financial Responsibility Program while the defendant is incarcerated and according to a court-ordered repayment schedule during the term of supervised release. All restitution payments shall be made to the Clerk, US District Court for transfer to the identified victims. The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the restitution remains unpaid. Any payments made, that is not payment in full, shall be divided proportionately among the parties named.

The fine of \$7,500.00 consists of \$1,500.00 on each of counts 1ss-5ss, and no fine on counts 6ss-11ss.

Payment of the fine shall begin immediately and shall be made according the requirements of the Federal Bureau of Prisons' Inmate Financial Responsibility Program while the defendant is incarcerated and according to a court-ordered repayment schedule during the term of supervised release. Any fine imposed is to be continued to be paid until the full amount, including any interest required by law, is paid. All fin payments shall be made to the Clerk of the US District Court. The defendant shall notify the United States Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the fine remains unpaid.

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
The assessment fee is due forthwith.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

See Continuation Page

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**
DISTRICT: **MASSACHUSETTS**

STATEMENT OF REASONS

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A The court adopts the presentence investigation report without change.
- B The court adopts the presentence investigation report with the following changes.
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)
(Use Section VIII if necessary.)
 - 1 Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):
 - 2 Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):
 - 3 Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):
 - 4 Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):
- C The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

- A No count of conviction carries a mandatory minimum sentence.
- B Mandatory minimum sentence imposed.
- C One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on
 - findings of fact in this case
 - substantial assistance (18 U.S.C. § 3553(e))
 - the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 20
 Criminal History Category: II
 Imprisonment Range: 37 to 46 months
 Supervised Release Range: 1 to 3 years
 Fine Range: \$ 7,500 to \$ 25,000,000
 Fine waived or below the guideline range because of inability to pay.

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**
DISTRICT: **MASSACHUSETTS**

STATEMENT OF REASONS

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

- A The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.
- B The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use Section VIII if necessary.)
- C The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)
- D The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one.):

- below the advisory guideline range
- above the advisory guideline range

B Departure based on (Check all that apply.):

- 1 **Plea Agreement (Check all that apply and check reason(s) below.):**
 - 5K1.1 plea agreement based on the defendant's substantial assistance
 - 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
 - binding plea agreement for departure accepted by the court
 - plea agreement for departure, which the court finds to be reasonable
 - plea agreement that states that the government will not oppose a defense departure motion.
- 2 **Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**
 - 5K1.1 government motion based on the defendant's substantial assistance
 - 5K3.1 government motion based on Early Disposition or "Fast-track" program
 - government motion for departure
 - defense motion for departure to which the government did not object
 - defense motion for departure to which the government objected
- 3 **Other**
 - Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)

- | | | |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.11 Lesser Harm |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service, Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders |
| | | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| | | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

D Explain the facts justifying the departure. (Use Section VIII if necessary.)

DEFENDANT: **ROBERT BURTON**
CASE NUMBER: **1: 13 CR 10292 - 001 - MLW**
DISTRICT: **MASSACHUSETTS**

Judgment — Page 10 of 11

STATEMENT OF REASONS

VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM
(Check all that apply.)

A The sentence imposed is (Check only one.):

- below the advisory guideline range
 above the advisory guideline range

B Sentence imposed pursuant to (Check all that apply.):

1 Plea Agreement (Check all that apply and check reason(s) below.):

- binding plea agreement for a sentence outside the advisory guideline system accepted by the court
 plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable
 plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):

- government motion for a sentence outside of the advisory guideline system
 defense motion for a sentence outside of the advisory guideline system to which the government did not object
 defense motion for a sentence outside of the advisory guideline system to which the government objected

3 Other

- Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below.):

C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)

- the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
 to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
 to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
 to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
 to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
 to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
 to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

D Explain the facts justifying a sentence outside the advisory guideline system. (Use Section VIII if necessary.)

The vulnerable victims powerfully expressed how the defendant had betrayed their trust as his friends, and how he blatantly and repeatedly lied to them. Defendants comments to the court were not credible and indicated that a sentence above the Guideline range was necessary to deter the defendant and protect the public.

Exhibit D

V3/24

70

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT
Civil Action No. 13-0812B

Notice sent
3/24/2015
D. M.
D. H.
J. J. L.
R. B.

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

PINNACLE FINANCIAL CONSULTING,
LLC, f/k/a PINNACLE FINANCIAL AND
LEGAL SOLUTIONS, LLC a Massachusetts
limited liability company; and ROBERT
BURTON, an individual,

Defendants,

CITIBANK, N.A.,

Trustee-Defendant.

(sc)

AMENDED [PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW
AGAINST DEFENDANTS PINNACLE FINANCIAL CONSULTING, LLC AND
ROBERT BURTON

I. FINDINGS OF FACT

1. On March 6, 2013, the Commonwealth of Massachusetts, by and through its Attorney General (the "Commonwealth") commenced the above-captioned Enforcement Action in the public interest. (*See* Court Docket P. # 1). The Commonwealth alleged that Defendants Pinnacle Financial Consulting, LLC and Robert Burton ("Defendants") committed numerous violations of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 4, by preying upon vulnerable consumers during the foreclosure and economic crisis. The Commonwealth alleged that Defendants primarily targeted minority and/or non-native English speakers, falsely promising that Defendants could dramatically improve the consumers' financial situations. The Commonwealth specifically alleged that Defendants:

- a. Illegally charged advance fees for mortgage loan modification services in violation of 940 C.M.R. 25.02;
- b. Deceptively held themselves out as attorneys authorized to practice law in the Commonwealth when they were not;
- c. Engaged in the unauthorized practice of law;
- d. Made misrepresentations regarding loan modification, bankruptcy petition preparation and investment related services;
- e. Failed to provide promised services to consumers; and
- f. Converted fees and other monies paid to Defendants by consumers.

(*See* Court Docket P. # 1).

2. On March 6, 2013, the Court (Fahey, J.) entered a Temporary Restraining Order ("TRO") prohibiting Defendants Robert Burton and Pinnacle Financial Consulting, LLC from, among other things, dissipating assets and destroying evidence. (Court Docket P. # 8, ¶¶ 1a-b).

3. On March 13, 2013, the Court (Fahey, J.) issued a Preliminary Injunction ("PI") (Court Docket P. # 9), that incorporated the terms of the TRO, and further prohibited Defendants from advertising, marketing, soliciting, receiving fees in relation to, and/or providing any loan modification services, bankruptcy petition preparation services, legal advice or services, and investment services. (Court Docket P. # 9, ¶ 2a-d).

4. On April 9, 2013, the Court (Fahey, J.) issued an Amended PI reaffirming the injunctive terms set forth in the TRO and PI (Court Docket P. # 20, ¶ 2b-f), and further ordering that Defendants:

- a. Distribute a copy of the Amended PI to every current and future consumer and employee of Defendants (Court Docket P. # 20, ¶ 3); and
- b. Within 7 days of entry of the Amended PI, deposit the amount of \$95,444.99 to be held in an escrow account until further order of this Court. (Court Docket P. # 20, ¶ 4).

5. On November 15, 2013, the Court (Fahey, J.) entered a Judgment of Contempt against Defendants, finding that Defendants violated the Court's injunctive orders on numerous occasions and assessing \$30,466.36 in restitution, \$170,000 in penalties, and attorney's fees and costs in the amount of \$39,866. (Court Docket P. # 36).

6. On January 29, 2014, with the agreement of Defendant Robert Burton, the Court entered default against Defendant Pinnacle Financial Consulting, LLC. (Court Docket P. # 37).

7. On June 23, 2014, the Court entered default against Defendant Robert Burton after Defendant Burton persistently failed to respond to discovery. (Court Docket P. ## 41 and 42).

8. On August 4, 2014, the Court (Ullman, J.) denied Defendant Burton's motions to reconsider the entry of default, citing to Defendant's repeated violations of the discovery rules

and orders of the Court. (Court Docket P. ## 43 and 44).

9. On December 19, 2014, the Commonwealth filed a second Motion to Compel Further Responses to Discovery. (Court Docket P. # 53).

10. On December 23, 2014, the Court allowed the Commonwealth's second Motion to Compel, providing that the Commonwealth's Requests to Admit, Sets One and Two (Exs. B and C)¹ would be deemed admitted if Defendants failed to comply with the order within 10 days. (Court Docket P. # 54).

11. On January 6, 2015, after Defendants failed to comply with the Court's December 23, 2014 order, the Commonwealth requested a further order deeming admitted its Requests to Admit, Sets One and Two. (Court Docket P. # 55).

12. On January 9, 2015, the Court entered an order deeming admitted every request in the Commonwealth's Requests to Admit, Sets One and Two.² (Court Docket P. # 58).

13. On January 21, 2015, the Court scheduled a hearing for assessment of damages to take place on February 5, 2015.

14. On January 22, 2015, the Commonwealth filed its Motion for Assessment of Damages and Entry of Final Judgment (Court Docket P. # 59) and served notice to Defendant of (1) the Court's Order Deeming Admitted Every Request in the Commonwealth's Requests to Admit, Sets One and Two; and (2) the Commonwealth's Motion for Assessment of Damages. (Court Docket P. # 63).

¹ All Exhibit references herein refer to the Exs. A-F attached to the Commonwealth's Memorandum of Law in Support of Motion to Assess Damages (Court Docket P. # 59).

² The Commonwealth received notice of the Order on or about January 21, 2015. (Court Docket P. # 58).

15. The following findings of fact and conclusions of law are based upon the well-pleaded factual allegations of the Complaint deemed admitted by virtue of Defendants' default (*see Nancy P. v. D'Amato*, 401 Mass. 516, 519 (1988)); the Commonwealth's Requests for Admissions, Sets One and Two, deemed admitted by order of this Court on January 9, 2015; the Commonwealth's Motion for Assessment of Damages and the exhibits referenced therein; the argument of the parties; and other pleadings or matters on file or of which the Court may take judicial notice.

II. DEFENDANTS AND RELATED ENTITIES

16. Defendant Burton was the sole officer and managing agent of Pinnacle Financial Consulting, LLC, and a number of similarly named entities, including Pinnacle Holdings, LLC; Pinnacle Immigration, LLC; Eliminate Bad Debts, LLC; Pinnacle Executive Marketing, LLC; Pinnacle Asset and Capital Management Group, LLC and Pinnacle Strategic Investments, LLC. (Court Docket P. # 1, ¶ 11; Court Docket P. # 16, ¶ 7; Ex. F, pp. 3-4³.)

17. Defendant Burton is not a person in military service as defined in the "Servicemembers Civil Relief Act," as set forth in 50 U.S.C. App. 501 *et seq.* (Court Docket P. # 60, ¶ 12; Affidavit as to Military Service ¶¶ 2-3, Ex. A).

18. Since at least 2007, Defendants offered and sold to consumers a number of different services including loan modification services, bankruptcy petition preparation services, legal document preparation services, immigration services, and investment services. (Court

³ The Court takes judicial notice of the findings of the United States Bankruptcy Court, District of Massachusetts, relating to Defendant Burton and his Pinnacle business, set forth in its May 29, 2013 Memorandum of Decision in *In re Rosario*, Case No. 11-43200 (Bankr. D. Mass.) (Ex. F.)

Docket P. # 1, ¶¶ 17-35; Ex. B, Nos. 3-4). During the Relevant Time Frame⁴, Defendants solicited and received at least \$1,241,840.45 from the sale of services to Massachusetts consumers, including \$640,860.29 for loan modification services to 354 consumers, \$118,768.44 for bankruptcy petition preparation services to 159 consumers and \$347,711.72 for legal document preparation services to 170 consumers. (Ex. B, Nos. 3-4; Ex. 1 to Ex. B, Bates No. ANSTISS 000027). Likewise, Defendants solicited and received \$134,500 in investment funds that they promised to invest on behalf of three consumers. (Court Docket P # 1, ¶¶ 32-35; Ex. E ¶¶ 6-25; Ex. D § 1.)

19. Defendants described the services they offered as follows:

Home Loan Modifications

A loan modification is when the lender of the note modifies the existing mortgage to make it more affordable. The interest rate, term, balance, and late fees may be modified by the lender. This is often the right choice for borrowers looking to avoid foreclosure or lower their payment, if the value of their home is distressed.

We have modified over 700 hundred home loans nationwide. Our system and strategic approach are key features that distinguishes us from our competitors. The loan modification process at Pinnacle is an interactive one between Pinnacle, Lender and Client.

(Ex. B, Nos. 3-4; Ex. 1 to Ex. B, Bates No. ANSTISS 000018).

Bankruptcy Petition Preparation

The primary reasons for filing personal bankruptcy are unforeseen medical expenses, excessive credit card debt, loss of employment, and divorce. Needless to say many of these events create not only financial difficulty but also a tremendous amount of disruption and distress in and of themselves. Chapter 7 and Chapter 13 are the two

⁴ The "Relevant Time Frame" refers to the four year period preceding the filing of the Complaint on March 6, 2013, reflecting the Commonwealth's four year statute of limitations for G.L. 93A.

main chapters under which individuals can file personal bankruptcy. Chapter 7 bankruptcy is a liquidation of assets while Chapter 13 bankruptcy is reorganization where the debtor creates a three to five year payment plan.

Pinnacle is the largest Bankruptcy Petition Preparer in Massachusetts. The prospective clients have the advantage of working with a staff that has procured a 90% successful discharge rate of all Chapter 7 Bankruptcies filed on behalf of pro se debtors. Our fees for a chapter 7 Bankruptcy have ranged from \$500.00-\$1,000.00; an estimated 70% less than a licensed attorney for the desired result.

(Ex. B, Nos. 3-4; Ex. 1 to Ex. B, Bates No. ANSTISS 000018).

Financial and Legal Document Consulting

Pinnacle provides consulting services to clients that require non-attorney services for their legal and financial needs through retail stores throughout the urban areas in Massachusetts.

Our competitive pricing and quality of service has driven the market to Pinnacle. We offer similar services of a traditional law firm, tax firm or financial advisory company at a fraction of the price to an underserved market.

(Ex. B, Nos. 3-4; Ex. 1 to Ex. B, Bates No. ANSTISS 000019).

20. Defendants targeted minority and non-native English speaking consumers, marketing themselves as low-cost alternatives to attorneys and traditional law firms. For example, in a business plan prepared for potential investors, Defendants described their business model as follows:

Our target clientele are lower to middle income individuals and families in urban to semi-urban communities. Most of our clients are first generation immigrants from Latin America and the Caribbean and now have made the United States their home. Since 2004, Pinnacle has provided a niche financial and legal document preparation service to this booming population. Our clientele has historically been excluded from the legal and financial services sector primarily because of the high costs of ample services offered by attorneys and commissioned based financial advisors. What

Pinnacle has provided is high quality, non-attorney services that allow our clientele to have access to various courts of law and financial products that vastly improve their lives.

(Ex. B, Nos. 3-5; Ex. 1 to Ex. B, Bates No. ANSTISS 000016).

21. Defendants referenced attorneys and law firms as their chief competitors and stated in their promotional materials that Defendants offered the same services as law firms at a better value. (Ex. B, Nos. 3-5; Ex. 1 to Ex. B, Bates No. ANSTISS 000022-24). Defendants sought out financially distressed consumers in their target demographic and aggressively marketed services to them. For example, Defendants identified homeowners who were facing imminent foreclosure of their homes and made contact with them via telephone or in-person visits, offering to help the homeowners save their homes from foreclosure. (Court Docket P. # 1, ¶ 18). In their communications, Defendants directed homeowners to print and internet advertisements including purported testimonials from past clients that touted Defendants' specialized skill and ability to negotiate favorable loan modification terms on behalf of delinquent borrowers. (*Id.*)

A. Defendants Solicited and Received Advance Fees

22. Defendants solicited and received unlawful advance fees from every loan modification client during the Relevant Time Frame. (Court Docket P. # 1 ¶ 28; Ex. B, Nos. 44-45). Where consumers expressed an inability to pay the entire fee up front, Defendants required that consumers pay the fee in monthly installments, with the first installment due at or immediately after Defendants' initial consultation, but before Defendants have completed any services. (Court Docket P. # 1 ¶ 28).

23. Defendants required the payment of advance fees as a condition to beginning any loan modification work on behalf of consumers. (Court Docket P. # 1 ¶ 30; Court Docket P. #

36, ¶ 20). The payments were not contingent upon Defendants' successfully obtaining a loan modification on behalf of the consumers. In fact, when consumers demanded refunds after failing to receive loan modifications, Defendants refused to provide any refunds, sometimes falsely stating that they never guaranteed a favorable outcome. (Court Docket P. # 1 ¶ 30).

B. Defendants Deceptively Held Out to the Public That They Were Attorneys Licensed To Practice Law In Massachusetts When They Were Not

24. Defendants were not licensed to practice law in the Commonwealth of Massachusetts at any time during the Relevant Time Frame. (Ex. C, No. 11; Ex. F, p. 4). Despite knowing this, Defendants represented to all of their customers that they were authorized to provide legal advice and services and promised to provide all of their customers with legal services and advice equivalent to what is offered by law firms, but at a fraction of the cost. (Court Docket P. # 1 ¶¶ 23-24; Ex. C, Nos. 1-8; Ex. F, p. 4). For example, on their website (www.pinnacle-fc.com (February 12, 2013)), Defendants stated:

Helpful and Affordable Services

You'll find that we charge much less than law firms and you receive the same high-quality home loan modification and tax strategy services. We pride ourselves on achieving positive results. That's why we work so hard on your behalf.
<http://www.pinnacle-fc.com/>

(Court Docket P. # 1 ¶ 24.)

25. Defendants further highlighted Robert Burton's legal training, emphasizing that Burton attended law school and worked at the well-known law firm, Foley Hoag.

Meet our CEO

Robert Burton is the chief executive officer of Pinnacle Financial Consulting, LLC. He is a graduate of Stony Brook University where he earned his Bachelor of Arts in Political Science in 2000.

Robert worked at 2 prominent Wall Street firms before starting law school in 2002. He is a 2005 graduate of the Massachusetts School of Law at Andover. After law school, Robert worked for Foley Hoag LLP, a law firm in Boston, and Deutsche Bank, the fifth largest investment bank in the world. Robert currently holds the Chartered Wealth Manager designation and is pursuing his Chartered Financial Consultant designation.
<http://www.pinnacle-fc.com/>

(Court Docket P. # 1 ¶ 24).

26. Defendants specifically offered to provide legal services, including the preparation of partnership agreements, incorporation papers, living trusts, complaints, petitions and other court filings, and estate planning services. Defendants also offered tax resolution services, offering to represent consumers before tax agencies. Further, Defendants offered to prepare various documents for filing with the U.S. Citizenship and Immigration Services and "find answers amid the complex and ever-changing maze of immigration law." (Court Docket P. # 16, ¶ 8.)

27. Defendants failed to disclose that Burton never passed the bar and was never licensed to practice law in Massachusetts, and only worked at Foley Hoag as a paralegal. (Court Docket P. # 1 ¶ 25; Ex. F, p. 4; Ex. C, Nos. 1-11.)

28. All of Defendants' clients relied to their detriment on Defendants' promise that they were legally authorized to practice law and their promise to provide legal advice and services. (Ex. C, Nos. 9-10).

C. Defendants Engaged in the Unauthorized Practice of Law

29. Defendants engaged in the unauthorized practice of law as a routine part of their everyday business. Defendants admit to engaging in the unauthorized practice of law as to every one of their loan modification, bankruptcy petition preparation, legal document preparation and

immigration clients. (Ex. B, Nos. 47-50). As set forth in the December 29, 2013 Memorandum of Decision of the United States Bankruptcy Court, District of Massachusetts in *In re Rosario*, Docket No. 11-43200-HJB, Defendants' system of bankruptcy petition preparation necessarily consisted of the unauthorized practice of law:

Here, even if the Defendants' claims that they followed their described method of petition preparation in each case are to be believed, the practices they describe as comprising the "Pinnacle System" include the unabashed provision of legal advice and constitute the unauthorized practice of law. Not only are bankruptcy clients provided with written and internet materials constituting legal advice, but those materials are also summarized and discussed to assist clients in determining what to include on the various bankruptcy schedules and statements. And, "[t]o make matters more dangerous, [the Defendants] have done so without any real apprehension that what they are doing is the unauthorized practice of law. To the contrary, they appear to be quite proud of their 'innovative' business model and strenuously argue that they are one of the 'legitimate' bankruptcy petition preparers in the marketplace." (Citation omitted.)

(Ex. F, p. 71).

D. Defendants Failed To Provide Promised Services

30. Defendants' advertisements falsely represented that they were able to obtain dramatic reductions in homeowners' mortgage payments. For example, text captions for client testimonial videos posted by Defendants on YouTube exaggerated Defendants' success in obtaining loan modifications:

a. He couldn't be happier with the result of his Loan Modification. His payment dropped from \$1450 to \$950. Another great job by our loan modification team!!!

b. After only a few months into the Loan Modification process. Her monthly House payment decreased from \$2000 to \$900 including taxes and insurance. A fantastic job once again by our Loan Modification team!

c. After a longer than usual Modification process. Her new house payment is now only \$1033. Lowered from an unaffordable \$2600. An incredible job done by our Loan Modification Team!!!

d. Moments after signing the permanent documents finalizing their Loan Modification. Their house payment went from \$2900 to \$1600. WOW!!!

e. Her mortgage payment was cut in half using the Loan Modification process. Visit www.Pinnacle-fc.com

f. He was not behind on his payments and was still approved for a Loan Modification cutting his mortgage payment in half!!! Visit us at www.pinnacle-fc.com

(Court Docket P. # 1 ¶ 20).

31. Likewise, during face-to-face consultations with homeowners, Defendants made both express and implied guarantees that Defendants could obtain dramatic reductions in mortgage payments for homeowners. (Court Docket P. # 1 ¶ 21).

32. In fact, Defendants failed to provide the results or services promised to their clients. (Court Docket P. # 1 ¶ 22; Court Docket P. # 36, ¶¶ 19-23; Ex. B, No. 46). Defendants failed to deliver on their promises to consumers, including:

- a. Leading consumers to believe they had a very good chance at obtaining loan modifications; (Court Docket P. # 1 ¶ 26a; Court Docket P. # 36, ¶ 20).
- b. Promising to obtain significant reductions in consumers' monthly mortgage payments; (Court Docket P. # 1 ¶ 26b; Court Docket P. # 36, ¶ 20).
- c. Leading consumers to believe they needed to become delinquent on their mortgage payments to obtain favorable loan modifications; (Court Docket P. # 1 ¶ 26c).
- d. Making "money back guarantees" that they failed to honor; (Court Docket P. # 1 ¶ 26d).
- e. Falsely representing to have refunded loan modification fees to consumers and even providing fraudulent copies of checks they claimed to have sent when they never actually issued any checks; (Court Docket P. # 1 ¶ 26e).
- f. Failing to provide consistent and thorough updates to consumers regarding the status of their loan modification and bankruptcy cases after promising to do so; (Court Docket P. # 1 ¶ 26f);

- g. Providing false updates regarding the progress of consumers' loan modification and bankruptcy proceedings; (Court Docket P. # 1, ¶ 26g; Court Docket P. # 36, ¶ 20).
- h. Misrepresenting to consumers certain work had been completed for their loan modifications when, in fact, the work had not been completed; (Court Docket P. # 1 ¶ 26h; Court Docket P. # 36, ¶¶ 20-21).
- i. Informing consumers their loan modifications were pending when, in fact, they had already been denied; (Court Docket P. # 1 ¶ 26i; Court Docket P. # 36, ¶¶ 20-21).
- j. Pressuring consumers into hiring Defendants to prepare and file bankruptcy pleadings after their loan modifications failed; (Court Docket P. # 1 ¶ 26j); and
- k. Leading consumers to believe that Defendants were authorized by law to provide legal advice and prepare and file legal pleadings, including bankruptcy pleadings, on behalf of consumers without the consumers' input; (Court Docket P. # 1 ¶ 26k-27; Ex. B, No. 46; Ex. C, Nos. 1-11).

33. Defendants harmed consumers by inducing people who were already in vulnerable and in fragile financial situations to purchase services that Defendants could not and/or were not authorized to provide. (Court Docket P. # 1 ¶ 27; Ex. B, No. 46; Ex. C, Nos. 1-11). Defendants caused consumers' financial situations to worsen, sometimes advising consumers to wait until days before their homes were sold at foreclosure, in order to induce consumers to hire Defendants to initiate bankruptcy cases on their behalf. (Court Docket P. # 1 ¶ 27). Furthermore, Defendants advised consumers to become delinquent in their mortgage payments, causing consumers to incur attorneys' fees, costs and late fees associated with foreclosure proceedings that consumers may not otherwise have incurred. (Court Docket P. # 1 ¶ 27). Defendants also deceived homeowners into making trial loan modification payments or other payments supposedly intended to be applied toward their mortgage debt, that Defendants received and never turned over to the homeowners' mortgage lenders. (Court Docket P. # 36, ¶¶ 19-23).

E. Defendants Converted Clients' Investment Funds

34. Defendants purported to offer financial and investment advising services through several entities, including Defendant Pinnacle Financial Consulting, LLC, and defunct entities such as Pinnacle Strategic Investments, LLC, and The Pinnacle Asset and Capital Management Group, LLC. (Court Docket P. # 1 ¶ 32). Through these entities, Defendants obtained over \$150,000⁵ from various investment clients promising to pay guaranteed returns within a short amount of time. (Ex. E, ¶ 6; Ex. D, § 1). In actuality, Defendants did not invest the monies as promised and did not make the promised payments (Ex. E, ¶ 6; Ex. D, § 1).

35. In one case, Ariel Castillo, an active duty Army chaplain, gave \$25,000 to Defendants to invest on his behalf in 2007. While Defendants represented to Mr. Castillo that they would invest his money in a diversified portfolio of publicly traded securities, Defendants did not do so and misappropriated Mr. Castillo's funds for their own use. From 2007 to 2012, Defendants continued to represent to Mr. Castillo that they were investing his money in his best interests. It was not until 2012, after Mr. Castillo returned from an overseas deployment and Defendants refused to return his investment money, that he discovered Defendants misappropriated his funds. Defendants used the funds to pay business and personal expenses. (Court Docket P. # 1, ¶ 34; Ex. D, § 1; Ex. E, ¶¶ 8-11).

36. In another case, Defendants promised to double the money of Burton's neighbor, Sean Hannan, over 30 days through a private placement, or non-public investment offerings.

⁵ While Defendants admitted in *USA v. Burton*, Docket No. 13-10292-MLW (D. Mass.) to obtaining over \$150,000 from four investment clients, the Commonwealth is only seeking to recover \$134,500 of that amount relating to 3 clients in this case. The Commonwealth already obtained a judgment for \$25,000 of restitution relating to investment proceeds through its Contempt Action against Defendants.

Defendants failed to double the investment principal, as promised, and returned only \$5,500 of the \$40,000 they received from Mr. Hannan despite repeated demands. Defendants used the funds to pay business and personal expenses. (Court Docket P. # 1, ¶ 35; Ex. D, § 1; Ex. E, ¶¶ 18-21).

37. In a third case, Defendants convinced Larry Coleman to liquidate \$98,000 of his retirement savings, promising to invest the money on behalf of Mr. Coleman. Mr. Coleman ultimately gave Defendants \$75,000 to invest on his behalf. Defendants deposited the money into business accounts but never invested the money as promised. Instead, Defendants used the funds to pay business and personal expenses. (Ex. E, ¶¶ 12-17; Ex. D, § 1).

III. CONCLUSIONS OF LAW

A. **The Commonwealth Has Met Its Burden of Proof And Has Established That Defendants Engaged in a Pattern and Practice of Unfair or Deceptive Acts In Violation Of G.L. c. 93A § 2 And the Regulations Promulgated Thereunder**

38. The Commonwealth has met its burden of proving by a fair preponderance of the evidence that Defendants violated G.L. c. 93A § 2 and the regulations promulgated thereunder, by:

- "[S]olicit[ing], arrang[ing], or accept[ing] ... advance fee[s] in connection with offering, arranging or providing" Foreclosure-related Services to at least 354 loan modification clients during the Relevant Time Frame in violation of 940 CMR 25.02;
 - Deceptively holding out to the public that they were attorneys admitted to practice law in the Commonwealth when they were not, inducing at least 354 loan modification clients, 139 bankruptcy petition preparation clients, and 170 legal document preparation clients who were deceived into purchasing services from Defendants during the Relevant Time Frame;
 - Engaging in the unauthorized practice of law as to at least 354 loan modification
-

clients, 139 bankruptcy petition preparation clients and 170 legal document preparation clients during the Relevant Time Frame;

- Failing to provide the services promised and sold to at least 354 loan modification clients, 139 bankruptcy petition preparation clients and 170 legal document preparation clients during the Relevant Time Frame; and
- Converting client funds, including the investment funds of at least 4 investment advisory clients.

39. In determining whether particular conduct is unfair or deceptive, this Court has specifically examined the circumstances of the case. *Com. v. ELM Medical Laboratories, Inc.*, 33 Mass. App. Ct. 71 (1992).

40. G.L. c. 93A, § 2(a) declares unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." A practice is "unfair" if it: (1) is "within at least the penumbra of some common-law, statutory, or other established concept of unfairness," (2) "is immoral, unethical, oppressive, or unscrupulous"; or (3) "it causes substantial injury to consumers." *PMP Assocs. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975); *Datacomm Interface Inc. v. Computerworld, Inc.*, 396 Mass. 760, 778 (1986); *see also Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 562 (2008) (citations omitted) (holding that it is well-established that a practice is unfair or deceptive in violation of Chapter 93A if it meets the above test).

41. "Unfairness ... has not been limited to practices forbidden at common law or by criminal statute," *Com. v. DeCotis*, 366 Mass. 234, 241 (1974), and relief under G.L. c. 93A is "not limited by traditional tort and contract law requirements." *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 693 (1975) (internal quotation marks omitted). In *Slaney*, the Supreme Judicial Court opined:

Chapter 93A of the General Laws is designated as the 'Regulation

of Business Practice and Consumer Protection Act.' St.1967, c. 813, s 2. It is a statute of broad impact which creates new substantive rights and provides new procedural devices for the enforcement of those rights. We recently had occasion to comment on the far-reaching effects of this statute in our opinion in *Commonwealth v. DeCotis*, -- Mass. --, --, fn. 8[FNa], 316 N.E.2d 748 (1974), where we said: 'We would not concur with the . . . argument that . . . (by enacting G.L. c. 93A) 'the Legislature did not confer new substantive rights on consumers,' Although G.L. c. 93A admittedly established new procedural devices to aid consumers and others . . . , it also created new substantive rights by making conduct unlawful which was not unlawful under the common law or any prior statute.' We also quoted with approval the statement 'that the statutory words "(u)nfair and deceptive practices' (in G.L. c. 93A, s 2) are not limited by traditional tort and contract law requirements." *Ibid*.

See Slaney, 366 Mass. at 694; *See also Nei v. Burley*, 388 Mass. 307, 313 (1983) ("[Chapter] 93A dispenses with the need to prove many of the essential elements of those common law claims"); *Schubach v. Household Finance Corp.*, 375 Mass. 133, 137 (1978) ("Chapter 93A created new substantive rights by making conduct unlawful which was not unlawful under the common law or any prior statute.")

42. "In determining whether an act or practice is deceptive, regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which the act or practice might reasonably be expected to have upon the general public." *Aspinall v. Phillip Morris Companies, Inc.*, 442 Mass. 381, 394 (2004) (internal quotations and citations omitted).

43. As the Appeals Court noted in *Mullen v. RBS Citizens, N.A.*, 2010 WL 3119096 at * 2 (Mass. App. Div., June 29, 2010):

An act or practice is deceptive under G.L. c. 93A, § 2 if it "could reasonably be found to have caused a person to act differently from the way he otherwise would have acted," or if it contains material misrepresentations or omissions that are likely to mislead the recipients. Further, a plaintiff may recover for "half-truths" if the defendant provides "fragmentary information" intended to

mislead or deceive the plaintiff. (Emphasis added.) (Internal citations omitted).

See also *Hug v. Gargano & Associates, P.C.*, 2007 WL 4358191 (Mass. Super., July 5, 2007) (doubling the damages awarded based on finding that defendants' misrepresentations or material omissions were willful and knowing).

44. The definition of an unfair or deceptive practice "goes far beyond the scope of the common law action for fraud and deceit. To cite only a few distinctions ... proof of actual reliance ... on a representation is not required." *Id.* at 703. In addition, evidence of consumer harm is not required. See *Purity Supreme, Inc. v. Attorney General*, 380 Mass. 762, 779 (1980) (the Attorney General is empowered to prevent unfair or deceptive practices "before they pose a threat to consumers"); *Com. v. Chatham Devel. Co., Inc.*, 49 Mass. App. Ct. 525, 528-529 (2000) ("There is no force to the argument" that "civil penalties under G.L. c. 93 A, § 4, should not be imposed ... where there is no allegation that any tenant was actually harmed...").

45. The Attorney General is authorized to promulgate regulations defining conduct that is "unfair or deceptive." See G.L. c. 93A, § 2(c); see, e.g., 940 CMR 3.02 (False Advertising), 940 CMR 3.05 (General Misrepresentations), 940 CMR 3.07 (Advertising or Offering to Sell on an "Easy Credit" Basis), 940 CMR 6.03 (Basic Principles, Retail Advertising), 6.04 (General Requirements, Retail Advertising), 6.09 (Availability of Financing), 6.10 (Compliance with Truth-in-lending Requirements). These regulations "have the force of law, and set standards the violations of which ... constitute violations of [G.L.] c. 93A." *Aspinall v. Philipp Morris Cos., Inc.*, 442 Mass. 381, 396 n. 18 (2004) (internal quotation marks omitted).

46. In August 2007, the Attorney General issued emergency regulations – 940 C.M.R. 25.00: Foreclosure Rescue Transactions and Foreclosure-Related Services – in order to address

an increasing number of predatory foreclosure rescue schemes. The regulations prohibit certain unfair or deceptive acts, including:

- offering or carrying out predatory, for-profit Foreclosure Rescue Transactions (940 C.M.R. 25.02(1));
- soliciting or accepting an advance fee in connection with offering, arranging, or providing Foreclosure-Related Services (940 C.M.R. 25.02(2)); and
- advertising Foreclosure-Related Services without clearly and conspicuously disclosing the precise services offered by the promoter and how the promoter will assist persons to avoid foreclosure (940 C.M.R. 25.03(c)).

47. “Foreclosure-Related Services” are defined by the regulation as “any goods or services related to, or promising assistance in connection with: (a) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation.” 940 C.M.R. 25.01.

B. Defendants Charged “Advance Fees” in Violation of 940 CMR 25.02(2)

48. The loan modification services for which Defendants solicited, arranged, or accepted advance fees were “Foreclosure-related Services” as defined in 940 CMR 25.01 because they were intended to “cur[e] or otherwise address[] [a client’s] default or failure to timely pay” a residential mortgage loan -obligation. (Court Docket P. # 1 ¶¶ 17-22, 26-31; Ex. 1 to Ex. B, Bates No. ANSTISS 000018).

49. Defendants' policy was to charge advance fees in relation to loan modifications. (Ex. B, No. 44). In fact, Defendants charged advance fees to every one of 354 loan modification clients during the Relevant Time Frame. (Ex. B, No. 44 and 45; Court Docket P. # 1 ¶¶ 17-22, 26-31).

50. The "attorney exception" to the regulation providing that section 25.02(2) “shall

not prohibit a licensed attorney from soliciting, arranging or accepting an advance fee or retainer for legal services in connection with the preparation and filing of a bankruptcy petition, or court proceedings, to avoid a foreclosure,” does not apply to Defendants because they were never licensed attorneys authorized to practice law in Massachusetts or in any other jurisdiction. (Ex. C, No. 11; Ex. D, p. 4).

C. Defendants Deceptively Held Out To The Public that they were Attorneys Admitted to Practice Law

51. Defendants deceptively held out to the public that they were attorneys admitted to practice law in the Commonwealth when they were not. (Court Docket P. # 1 ¶¶ 23-25; Ex. C, Nos. 1-11; Ex. F, p. 4). Through these deceptive representations, Defendants induced at least 354 loan modification clients, 139 bankruptcy petition preparation clients, and 170 legal document preparation clients into purchasing services from Defendants during the Relevant Time Frame. (Ex. 1 to Ex. B, Bates No. ANSTISS 000027; Ex. C, Nos. 9-10).

D. Defendants Engaged In The Unauthorized Practice of Law

52. It is well-settled that “[o]nly attorneys may represent parties in court and give legal advice.” *See Goldblatt v. Corporation Counsel of Boston*, 360 Mass. 660, 665 (1971). The Supreme Judicial Court defined the practice of law to include:

[D]irecting and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to such rights and methods and the practice, as an occupation, of drafting documents by which such rights are created, modified, surrendered or secured.

In re Hrones, 457 Mass. 844, 849-850 (2010).

53. Defendants routinely engaged in the unauthorized practice of law (Ex. F, p. 71),

and admit that they engaged in the unauthorized practice of law during the Relevant Time Frame in connection with 354 loan modification clients, 139 bankruptcy petition preparation clients, and 170 legal document preparation clients. (Court Docket P. # 1, Nos. 47-50; *see also* Ex. 1 to Ex. B, Bates No. ANSTISS 000027)).

E. Defendants Failed to Provide the Services Promised to their Clients

54. Defendants' failed to provide the services promised to their clients, and such failure constitutes a separate violation of G.L. c. 93A, § 2. (Civil Docket P. # 1, ¶¶ 22, 26a-k; Civil Docket P. # 36, ¶ 20-21; Ex. B, Nos. 47-50; Ex. C, Nos. 1-11). Defendants admit that they failed to provide the services promised to 354 loan modification clients during the Relevant Time Frame. (Ex. B, No. 46). Moreover, Defendants promised to provide legal services that they could not and were not legally authorized to provide with respect to 354 loan modification clients, 139 bankruptcy petition preparation clients, and 170 legal document preparation clients (Ex. 1 to Ex. B, Bates No. ANSTISS 000027; Ex. B, Nos. 47-50; Ex. C, Nos. 1-11).

F. Defendants Converted Investment Funds

55. Defendants' conversion of client funds constitutes a separate violation of G.L. c. 93A, § 2. Defendants took advantage of their clients' trust and actively deceived their clients into believing that Defendants were managing investment portfolios on their clients' behalf when, in reality, Defendants had misappropriated their clients' funds for personal use. (Civil Docket P. # 1, ¶¶ 32-35; Ex. F, ¶ 6; Ex. D, § 1).

G. Defendant Burton is Personally Liable

56. This Court finds that Defendant Burton was the sole owner and managing officer of Pinnacle Financial Consulting, LLC and the Pinnacle Entities, and had total oversight, direction and control over their operations. (Court Docket P. # 1, ¶ 11; Ex. B, Nos. 1-2).

Defendant Burton directed all aspects of the business, including marketing and advertising, meeting with and making promises to clients, and the use of client funds. (Court Docket P. # 1, ¶¶ 26-35; Ex. B, Nos. 1-2; Ex. D, § 1; Ex. E, ¶¶ 2-25). Accordingly, the Court finds Defendant Burton personally liable for his own unfair or deceptive conduct in violation of c. 93A, as well as for the unfair or deceptive conduct of Pinnacle Financial Consulting, LLC. “It is settled that corporate officers may be held personally liable under c. 93A for their personal participation in conduct invoking its sanctions.” *Cnty. Builders, Inc. v. Indian Motorcycle Assocs., Inc.*, 44 Mass. App. Ct. 537, 560 (1998). *See also Nader v. Citron*, 372 Mass. 96, 102-03 (1977), *abrogated on other grounds by Iannacchino v. Ford Motor Co.*, 451 Mass. 623 (2008). In addition, an officer is liable for a corporation’s violations of c. 93A “where the individual operated or controlled the corporation” and “had knowledge of [the] unlawful acts.” *Id.* at 103.

IV. ASSESSMENT OF DAMAGES

Based upon the above-referenced findings of fact and conclusion of law, this Court assesses damages against Defendants in the total amount of \$1,906,840.45, consisting of restitution in the amount of \$1,241,840.45, and civil penalties in the amount of \$665,000 as follows:

A. Restitution

Pursuant to G.L. c. 93A, § 4, this Court has the authority to “make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any moneys ... which may have been acquired by means of such method, act, or practice.” The Commonwealth is entitled to an award of restitution of \$1,241,840.45, consisting of all amounts received by Defendants for loan modification services, bankruptcy petition preparation services, legal

document preparation services, and investment services as follows:

1. The Commonwealth is Entitled to Recover Restitution Consisting of All Fees Paid to Defendants for Loan Modification Services

Defendants sold loan modification services to 354 consumers during the Relevant Time Frame generating fees of at least \$640,860.29. (Ex. 1 to Ex. B, Bates No. ANSTISS 000027).

With respect to each of their loan modification clients, Defendants:

- Charged illegal "advance fees" in violation of 940 CMR 25.02;
- Deceptively held out to the public that they were attorneys admitted to practice law when Defendants knew they were not;
- Engaged in the unauthorized practice of law when Defendants knew they could not; and
- Failed to provide the services promised to their clients.

The Commonwealth is entitled to recover restitution consisting of all amounts paid to Defendants for loan modification services.

2. The Commonwealth is Entitled to Recover Restitution Consisting of All Fees Paid to Defendants for Bankruptcy Petition Preparation Services

Defendants sold bankruptcy petition preparation services to 139 consumers during the Relevant Time Frame generating fees of at least \$118,768.44. (Ex. 1 to Ex. B, Bates No. ANSTISS 000027). With respect to each of their bankruptcy petition preparation clients,

Defendants:

- Deceptively held out to the public that they were attorneys admitted to practice law when Defendants knew they were not;
- Engaged in the unauthorized practice of law when Defendants knew they could

not; and

- Failed to provide the legal services promised to their clients.

The Commonwealth is entitled to recover restitution consisting of all amounts paid to Defendants for bankruptcy petition preparation services.

3. The Commonwealth is Entitled to Recover Restitution Consisting of All Fees Paid to Defendants for Legal Document Preparation Services

Defendants sold legal document preparation services to 170 consumers during the Relevant Time Frame generating fees of at least \$347,711.72. (Ex. 1 to Ex. B, Bates No. ANSTISS 000027). With respect to each of their legal document preparation clients, Defendants:

- Deceptively held out to the public that they were attorneys admitted to practice law when Defendants knew they were not;
- Engaged in the unauthorized practice of law when Defendants knew they could not; and
- Failed to provide the legal services promised to their clients.

The Commonwealth is entitled to recover restitution consisting of all amounts paid to Defendants for legal document preparation services.

4. The Commonwealth is Entitled to Recover Restitution Consisting of All Amounts Given to Defendants by Investment Clients

Defendants obtained \$134,500 from clients, including Ariel Castillo (\$25,000), Sean Hannan (\$34,500), and Larry Coleman (\$75,000), by falsely representing that Defendants would invest the amounts on behalf of their clients and generate significant investment returns. (Ex. D, § 1; Ex. E, ¶ 6). Instead, Defendants admit to using the investment funds to pay personal and business expenses. The Commonwealth is entitled to recover restitution of all the amounts obtained by Defendants pursuant to their fraudulent investment scheme.

B. Penalties

"If the court finds that a person has employed any method, act or practice which he knew or should have known to be in violation of [G.L. c. 93A, § 2], the court may require such person to pay to the commonwealth a civil penalty of not more than five thousand dollars for each such violation." G.L. c. 93A, § 4. Here, the Court finds that Defendants knew or should have known that their conduct with respect to loan modification services, bankruptcy petition preparation services, legal document preparation services and investment services violated G.L. c. 93A. As a result, the Court assesses \$665,000 in penalties against Defendants, consisting of \$1,000 in penalties for each of Defendants' 665 victims. This assessment of penalties is reasonable in consideration of the egregious nature of Defendants' conduct, and the fact that Defendants engaged in multiple instances of unfair or deceptive conduct as to each of their clients.

V. AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS

The Court awards the Commonwealth \$55,425 in attorneys' fees and costs pursuant to G.L. c. 93A, § 4. The Court finds this award to be more than reasonable in light of the hourly rate and time estimate provided by the Commonwealth, as well as "the ability and reputation of the attorney, the demand for his services by others, the amount and importance of the matter involved, the time spent, the prices usually charged for similar services by other attorneys in the same neighborhood, the amount of money or the value of the property affected by controversy, and the results secured." *Cummings v. Nat'l Shawmut Bank of Boston*, 284 Mass. 563, 569 (1934).

VI. PERMANENT INJUNCTIVE RELIEF

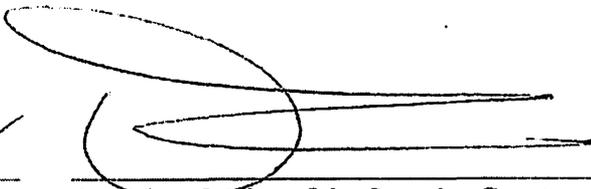
G.L. c. 93A, § 4 authorizes the Court to order a permanent injunction if it will serve the public interest. *Com. v. ELM Labs.*, 33 Mass. App. Ct. 71, 83 (1992). The Court finds that such

an injunction is warranted here to protect consumers from further harm. In consideration of
Defendants' multiple violations of G.L. c. 93A, their persistent refusal to comply with
Massachusetts law and Court orders, and the risk of such conduct continuing, the Court finds that
entry of a permanent injunction prohibiting Defendants from engaging in loan modification
services, bankruptcy petition preparation services, investment advising services and the practice
of law is appropriate to protect the public from future harm. The terms of the permanent
injunction are more particularly set forth in the Final Judgment and Permanent Injunction entered
in this action.

(sc)

SO ORDERED.

Dated: 3/17/15



Associate Justice of the Superior Court

Exhibit E

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPERIOR COURT
Civil Action No. 13-0812B

COMMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

PINNACLE FINANCIAL CONSULTING,
LLC, f/k/a PINNACLE FINANCIAL AND
LEGAL SOLUTIONS, LLC a Massachusetts
limited liability company; and ROBERT
BURTON, an individual,

Defendants,

CITIBANK, N.A.,

Trustee-Defendant.

~~PROPOSED~~ FINAL JUDGMENT AND PERMANENT INJUNCTION

*Notice
in Hand -
JC -3-25-15*

JUDGMENT ENTERED FOR REASON OF THE COURT'S
PURITY TO THE COMMONWEALTH OF MASSACHUSETTS
AND NOTICE SEND TO PARTIES ACCORDANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(b) AS FOLLOWS

March 25, 15

This Court, having considered the Complaint, Motion for Assessment of Damages and Entry of Final Judgment and Permanent Injunction as to Defendants Pinnacle Financial Consulting, LLC and Robert Burton (the "Defendants"), together with the Memorandum of Law and referenced exhibits ("Motion for Assessment"), other relevant pleadings and orders in the above-captioned action, and any testimony, evidence, and oral argument, and finding good cause therefore, hereby **ORDERS, ADJUDGES AND DECREES:**

1. Jurisdiction over the Defendants is proper pursuant to G.L. c. 223, §5.
2. Venue is proper in Suffolk County pursuant to G. L. c. 223, § 5, and G. L. c. 93A, § 4.
3. The Defendants have violated the Consumer Protection Act, G. L. c. 93A, § 2 through engaging in the unfair and/or deceptive conduct more particularly described in the Court's Findings of Fact and Conclusions of Law, including:

- a. "[S]olicit[ing], arrang[ing], or accept[ing] ... advance fee[s] in connection with offering, arranging or providing" Foreclosure-related Services to at least 354 loan modification clients during the Relevant Time Frame in violation of 940 CMR 25.02;
- b. Deceptively holding out to the public that they were attorneys admitted to practice law in the Commonwealth when they were not, inducing at least 354 loan modification clients, 139 bankruptcy petition preparation clients, and 170 legal document preparation clients who were deceived into purchasing services from Defendants during the Relevant Time Frame;
- c. Engaging in the unauthorized practice of law as to at least 354 loan modification clients, 139 bankruptcy petition preparation clients and 170 legal document preparation clients during the Relevant Time Frame;
- d. Failing to provide the services promised and sold to at least 354 loan modification clients, 139 bankruptcy petition preparation clients and 170 legal document preparation clients during the Relevant Time Frame; and

- e. Converting client funds, including the investment funds of at least 3 investment advisory clients.

4. The Defendants knew or should have known that their participation in the unfair and deceptive scheme described in the Complaint and the Commonwealth's Motion for Assessment was unfair or deceptive in violation of G.L. c. 93A, § 2(a), and 940 C.M.R. § 3.16.

5. Assessment of restorative restitution against the Defendants is authorized by G. L. c. 93A, § 4 and is appropriate in this case.

6. All of the restitution awarded by this Final Judgment and Order consist of monies obtained by Defendants through false pretenses, false representations, and actual fraud.

7. Assessment of civil penalties against the Defendants is authorized by G. L. c. 93A, § 4 and is appropriate in this case.

8. Assessment of the costs of investigation and prosecution of the case against the Defendants, including the Commonwealth's reasonable attorney's fees, is authorized by G. L. c. 93A, § 4 and is appropriate in this case.

9. The Defendants are jointly and severally liable for the restorative restitution, penalties and attorney's fees and costs assessed.

10. Entry of a permanent injunction as to the Defendants is authorized by G. L. c. 93A, § 4 and is appropriate in this case, because it will promote the public interest by preventing the Defendants from repeating their unfair and deceptive acts and practices.

PERMANENT INJUNCTION AND ORDER

JUDGMENT is accordingly entered pursuant to G.L. c. 93A, § 4, in favor of the

Commonwealth of Massachusetts, against the Defendants with respect to the Commonwealth's claim they violated G.L. c. 93A § 2 and the regulations promulgated thereunder, as follows:

1. Defendants Robert Burton and Pinnacle Financial Consulting, LLC are hereby **PERMANENTLY ENJOINED** from:

A. Advertising, marketing, soliciting, receiving fees in relation to, and/or providing any loan modification services in Massachusetts, including without limitation, Foreclosure-Related Services, as defined in 940 C.M.R. 25.01 to include any service, plan, or program, offered or provided to assist or attempt to assist the consumer with any goods or services related to, or promising assistance in connection with (a) avoiding or delaying actual or anticipated foreclosure proceedings concerning residential property; or (b) curing or otherwise addressing a default or failure to timely pay, with respect to a residential mortgage loan obligation;

B. Advertising, marketing, soliciting, receiving fees in relation to, and/or providing any bankruptcy petition preparation services in Massachusetts, including without limitation, any service, plan, or program, offered or provided to assist or attempt to assist the consumer with any document prepared for filing in a United States bankruptcy court or a United States district court in connection with a bankruptcy case;

C. Advertising, marketing, soliciting, receiving fees in relation to, and/or engaging in the "unauthorized practice of law" in Massachusetts as that term is defined in *In re Hrones*, 457 Mass. 844, 849-50 (2010), and/or referenced in the Massachusetts Rules of Professional Conduct, Rule 5.5(b);

D. Advertising, marketing, soliciting, receiving fees in relation to, and/or providing any financial and investment advising services for compensation, including without limitation, effecting or attempting to effect purchases or sales in securities for the account of others; and advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or any other investment product;

2. Pursuant to G.L. c. 93A, § 4, Defendants Robert Burton and Pinnacle Financial Consulting, LLC are **ORDERED** to pay to the Commonwealth restitution in the amount of **\$1,241,840.45**.

3. Pursuant to G.L. c. 93A, §4, Defendants Robert Burton and Pinnacle Financial Consulting, LLC are **ORDERED** to pay to the Commonwealth of Massachusetts civil penalties in the amount of **\$665,000**, consisting of \$1,000 in penalties for each of Defendants' 665 loan modification, bankruptcy petition preparation and legal document preparation victims.

4. Pursuant to G.L. c. 93A, §4, Defendants Robert Burton and Pinnacle Financial Consulting, LLC are **ORDERED** to pay to the Commonwealth of Massachusetts **\$55,425** for its reasonable attorney's fees for the investigation and litigation of this action.

5. Any monies collected from the Defendants pursuant to this Final Judgment and Order shall be allocated in the following order of priority: first to restitution, *pro rata*, second to civil penalties, and third to the Commonwealth's fees and costs.

6. The terms of this Final Judgment and Order shall extend to Defendants, and their officers, agents, servants, employees, attorneys, successors and assigns, and all other persons and

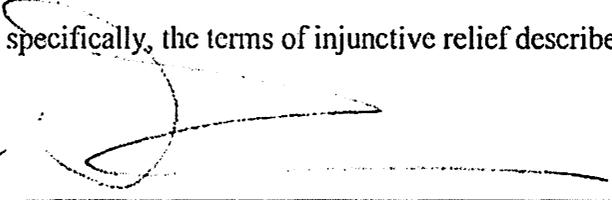
entities, whether acting individually or in active participation or concert with them, directly or indirectly, through any corporation, partnership, trust, association, franchise, distributorship, or other entity or device through which Defendants may now or hereafter act or conduct business in the Commonwealth of Massachusetts. For the avoidance of doubt, this Final Judgment and Order shall constitute a continuing obligation, and shall apply to Pinnacle Holdings, LLC; Pinnacle Immigration, LLC; Pinnacle Financial Solutions, LLC; Pinnacle Financial and Immigration Solutions, LLC; Eliminate Bad Debt, LLC; Pinnacle Executive Marketing, LLC; and any other entities through which Defendants may now or hereafter act or conduct business.

7. Violation of this Final Judgment and Order shall constitute a violation of G.L. c. 93A, § 4, and may be punished as contempt.

8. The Defendants shall inform any successors or assigns of the terms of this Final Judgment and Order, including, specifically, the terms of injunctive relief described herein.

SO ORDERED.

Dated: March 17, 2015


Associate Justice of the Superior Court

Dennis J. Cronin

I HEREBY ATTEST AND CERTIFY ON
March 15, 2015, THAT THE
FOREGOING DOCUMENT IS A FULL,
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE,
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE
SUFFOLK SUPERIOR CIVIL COURT
DEPARTMENT OF THE TRIAL COURT

BY: *Michael J. Donovan*
Michael J. Donovan

Exhibit F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. 13-10292-MLW

UNITED STATES OF AMERICA

v.

ROBERT BURTON

ORDER REVOKING PRETRIAL RELEASE

Boal, M.J.

The defendant, Robert Burton, has pled guilty to securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. § 240.10b-5; procuring false tax returns in violation of 26 U.S.C. § 7206(2); and subscribing false tax returns in violation of 26 U.S.C. § 7206(1). A sentencing hearing is scheduled for November 13, 2014.

After a detention hearing, Burton was originally detained pending trial based in part on his lack of candor with the Pretrial Services Officer. Docket No. 16. The Court granted the defendant's motions for reconsideration of the Court's order of detention and released him on conditions on November 4, 2013. Docket No. 35. The defendant's release conditions included a \$25,000 secured bond and a curfew from 8:00 p.m. to 6:00 a.m. *Id.* The curfew was later modified to 12:00 a.m. to 6:00 a.m. Docket No. 69. The defendant further filed a motion to modify his conditions of release to remove the curfew requirement, which was denied. Docket No. 91.

On October 1, 2014, Pretrial Services filed a memorandum notifying the Court that the defendant had violated his curfew. On September 30, 2014, Pretrial Services received notification at 12:30 a.m. that the defendant failed to return to his residence as required.

Multiple calls to the defendant's landline and cell phone were unsuccessful. The Pretrial Services Officer spoke with the defendant's third-party custodian, who advised that he was unaware of the defendant's location. The Pretrial Services Officer received a call from the defendant at 1:36 a.m. At that time, defendant stated that he had been home asleep since 10:00 p.m. After further questioning, the defendant stated that he was lying and that he had just returned to his residence. He stated that he was out having dinner and had lost track of time.

The defendant made his initial appearance on October 1, 2014, at which time the government moved to revoke pretrial release. This Court held a hearing on the issue of revocation of pretrial release at that time.

"A person who has been released under section 3142 of [Title 18], and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court." 18 U.S.C. § 3148(a). The Court shall enter an order of revocation and detention if, after a hearing, the Court finds that (1) "there is clear and convincing evidence that the person has violated any other condition of release;" and (2) "there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community," or "the person is unlikely to abide by any condition or combination of conditions of release." 18 U.S.C. § 3148(b).

At the October 1, 2014 hearing, the defendant conceded that he had violated his conditions of release. The defendant's violation of his curfew is troubling. However, it is more troubling that he originally lied to the Pretrial Services Officer about it. The Court originally ordered the defendant detained because, among other things, his lack of credibility and candor with Pretrial Services made it more likely that he would be difficult to supervise and would not

comply with Pretrial Services directives. Docket No. 16 at 4-5. Moreover, the Court was particularly concerned about Burton's statements regarding the location of his passport. He told Pretrial Services he was unaware of the location of his passport and that he believed that his girlfriend packed it up when she moved out of the house. However, he had recently traveled to the Dominican Republic in June 2013. The Court stated that "[u]nder the circumstances, the Court could not consider release unless the passport was found and surrendered to Pretrial Services." Docket No. 16 at 5.

After the Court detained him, Burton stated that his passport had been found and that he was willing to surrender it to Pretrial Services. Burton's girlfriend stated to Pretrial Services that Burton directed her to his residence where she obtained it from his office. Despite the Court's reservations regarding Burton's inconsistent statements about the location of his passport, the Court decided to release him on strict conditions.

Burton's release has not been without incident. On February 4, 2014, the Court found that he had violated his conditions of release but that additional conditions could be fashioned. Docket No. 51. Now, Burton has again violated his conditions of release. In light of his past lack of candor, Burton's most recent violation of his release conditions and his misrepresentation to Pretrial Services, the Court finds that he is unlikely to abide by any condition or combination of conditions of release. Accordingly, the Court orders Burton detained.¹

¹ The Court also notes that on September 30, 2014, the U.S. Bankruptcy Court for the District of Massachusetts issued an order finding Burton in civil contempt and ordering the U.S. Marshals Service to apprehend and incarcerate Burton until such time as he complied with the Bankruptcy Court orders. While the Court has not relied on the Bankruptcy Court's Order in making its decision, it is likely that Burton would be held for some period of time pursuant to that Order even if this Court released him.

ORDER OF DETENTION

In accordance with the foregoing memorandum, IT IS ORDERED that:

1. Robert Burton be committed to the custody of the Attorney General or his designated representative, for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

2. Robert Burton be afforded a reasonable opportunity for private consultation with counsel; and

3. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which Robert Burton is detained and confined shall deliver him to an authorized Deputy United States Marshal for the purpose of any appearance in connection with a court proceeding.

RIGHT OF APPEAL

THE PERSON OR PERSONS DETAINED BY THIS ORDER MAY FILE A MOTION FOR REVOCATION OR AMENDMENT OF THE ORDER PURSUANT TO 18 U.S.C. § 3145(b).

Date: October 3, 2014

/s/ Jennifer C. Boal
JENNIFER C. BOAL
United States Magistrate Judge